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## Early 20th Century Perceptions of Civil Law-Common Law Difference: F.L. Joannini's Spanish-English Civil Code Translations in Context

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**EARLY 20TH CENTURY PERCEPTIONS OF CIVIL LAW-  
COMMON LAW DIFFERENCE: F.L. JOANNINI’S SPANISH-  
ENGLISH CIVIL CODE TRANSLATIONS IN CONTEXT**

Seth S. Brostoff\*

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ABSTRACT

*The proper method for translating Spanish and Portuguese civil law concepts into English was a topic of debate among civil law scholars and comparatists at the turn of the last century. This article examines the translation approaches of three Americans (Clifford Walton, F.L. Joannini, and Joseph Wheless) who independently translated the Spanish, Colombian, Argentine, and Brazilian Civil Codes during the period 1899-1920. Specifically, Walton’s (1899)*

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*Spanish Civil Code translation's use of common law English is contrasted with Joannini's Colombian (1905) and Argentine (1917) Civil Codes translations' preference for a "civilian" legal lexicon, including substantial borrowing from the special civil law English vocabulary of the Louisiana Civil Code.*

*Joannini's as well as Wheless's use of civilian terminology received mixed reviews in law journals. Disagreement among comparatists about the translators' methods is explored below and placed within the context of contemporary English-speaking scholarly paradigms of civil law-common law difference, including attitudes to civilian terminology. The article concludes with observations about the role of intellectual history and political crosscurrents—especially the creation of new mixed legal systems during the 19th and early 20th centuries—in shaping English and American attitudes to the civil law tradition in general and to legal translation in particular.*

Keywords: legal translation, civil code, Spanish civil law, Spanish craze

## I. INTRODUCTION

The translation of civil law terms and concepts into English is an inherently comparatist activity with challenges that are well-recognized by civil law scholars and legal translators.<sup>1</sup> These challenges were particularly apparent during the first quarter of the 20th

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1. See H.C. GUTTERIDGE, *COMPARATIVE LAW: AN INTRODUCTION TO THE COMPARATIVE METHOD OF LEGAL STUDY & RESEARCH* 117-18 (2d ed., Cambridge U. Press 1949) ("The greatest strain [in legal translation] is naturally experienced by a lawyer who passes from a legal language of the Continent of Europe, founded to a large extent on the phraseology of Roman law, to the curious and for the most part unscientific terminology of Anglo-American law."); Edgardo Rotman, *The Inherent Problems of Legal Translation: Theoretical Aspects*, 6 *IND. INT'L & COMP. L. REV.* 187, 189 (1995) ("To translate a text from the language of a civil law country to the language of another civil law country is generally less complicated than to translate the same text to the language of a common law country."); see also Olivier Moréteau, *Les frontières de la langue et du droit : vers une méthodologie de la traduction juridique*, 61 *REVUE INTERNATIONALE DE DROIT COMPARÉ* 695, 706-09 (2009) (describing various problems of translation in comparative law, particularly translations across the civil law-common law divide); Alain Levasseur & Vicenç Feliú, *The English Fox in the Louisiana Civil Law*

century, as the U.S. War Department and the new Comparative Law Bureau sponsored the publication of multiple Spanish-English civil code translations for use in the country's new mixed legal systems or for comparative study of South American law. Perhaps the most noteworthy Spanish-English civil code translation of the period was F.L. Joannini's Colombian Civil Code, which he translated for the Panama Canal Zone's *de facto* government, the Isthmian Canal Commission, in 1905.<sup>2</sup> Tasked with translating Colombian civil law terms and concepts into English for the use of Zone officials and territorial judges, Joannini relied heavily on civilian vocabularies, including the special legal lexicon of the Louisiana Civil Code, rather than the legal English of the common law. As a result, Louisiana civil law terms such as *acquets and gains*, *lesion beyond moiety*, and *benefit of discussion* all made their unexpected lexical debut on the Isthmus of Panama.<sup>3</sup>

Not every translator of the period was so sensitive to civilian terminology. When Clifford Walton translated the Spanish Civil Code for the War Department's use in Cuba in 1899, the U.S. Army lawyer largely embraced common law terminology to render civil law concepts into English. Thus, in Walton's translation, *trespass*, *fee simple*, and *easement* are used while civil law terms are uncommon.<sup>4</sup> Joannini's special emphasis on civilian English was therefore far from being the universal practice at the turn of the last century. Joannini nevertheless favored civil law English vocabularies in a

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*Chausse-Trappe: Civil Law Concepts in the English Language; Comparatists Beware!*, 69 LA. L. REV. 715, 735 (2009) (stating that translation of French civil law terms into legal English inherently obscures "the original and only authentic understanding" of the civilian concept being translated).

2. See THE CIVIL CODE OF THE REPUBLIC OF PANAMA AND AMENDATORY LAWS CONTINUED IN FORCE IN THE CANAL ZONE... (Frank L. Joannini trans., Isthmian Canal Commission 1905) [hereinafter, Col. Civ. C.]. As Joannini translated directly from the Colombian Civil Code of 1887, this article refers to his translation as the Colombian (rather than Panamanian) code.

3. See *infra* Part II.B.

4. See *infra* Part II.A.

subsequent translation of the Argentine Civil Code of 1871 (published by the Bureau in 1917),<sup>5</sup> as did another American, Joseph Wheless, in his translation of the Brazilian Civil Code of 1916 (completed in 1920).<sup>6</sup> Joannini's Colombian Civil Code translation remained a primary source of private law in the Canal Zone until its repeal in 1933, while both Joannini's and Wheless's translations of the Argentine and Brazilian Civil Codes remained the principal English translations well into the 20th century.<sup>7</sup>

While Walton's translation largely escaped criticism, Joannini's and Wheless's preference for civilian vocabularies received mixed reviews in law journals, with some legal scholars arguing that their method of translation preserved unnecessary distinctions of terminology between legal systems.<sup>8</sup> Such criticism likely reflected widely held beliefs among late 19th and early 20th centuries civil law scholars and comparatists, who tended to emphasize the similarity of the world's two great legal traditions, the civil law and the common law. Indeed, many contemporary scholars argued that the two traditions were growing increasingly alike and that remaining differences were primarily distinctions of procedure and terminology, rather than substance. Moreover, the creation of new mixed legal systems vindicated predictions of global convergence as American colonial judges in Puerto Rico and the Philippines boasted that the two traditions were blending in their courtrooms without incident, and Pan-Americanism's emphasis on uniform legislation for

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5. See *infra* Part II.C.

6. See *infra* Part II.D.

7. See John O. Collins, *Canal Zone Changes to Common Law System*, 20 A.B.A. J. 233 (1934) (discussing repeal of Colombian Civil Code in Zone); Charles Szladits, *Notes on Translations of Foreign Civil and Commercial Codes*, 3 AM. J. COMP. L. 67, 70 & nn.29-33 (1954) (listing Joannini & Wheless as primary English translations available); Ricardo J. Navarro, *A Bibliography of Latin American Law: Primary and Secondary Sources in English*, 19 TEX. INT'L L.J. 133, 140-41 (1984) (same listing thirty years later).

8. Layton B. Register, *The Argentine Civil Code Together with Constitution and Law of Civil Registry*, 66 U. PA. L. REV. 180, 182 (1918) (book review); E.G. Lorenzen, *The Civil Code of Brazil*, 30 YALE L.J. 652, 652 (1921) (book review); Max Radin, *The Civil Code of Brazil*, 9 CAL. L. REV. 443, 444 (1921) (book review).

the Americas likewise created ideological incentives for overcoming civil law-common law difference with technical (i.e., comparative) solutions.<sup>9</sup> In this context, Joannini's creative translation approach, sensitive as it was to civil law-common law difference, appears at odds with strong, identifiable trends in early 20th century American legal thought, and it is easy to understand why civil law scholars and comparatists esteemed translations that presented civil law concepts in legal English (such as Walton's) and criticized those that preserved the subtle lexical nuances of the two traditions (such as Joannini's).

As several scholars have noted, comparative law's assumptions and methods have often been influenced by contemporary cultural and political developments, and this article argues that early 20th century American legal comparison was no exception.<sup>10</sup> Joannini's Spanish-English civil code translations, and the debates which they generated among comparatists and civil law scholars, provide valuable insight into the role that intellectual history and global political developments played in shaping early 20th century English and American attitudes to the civil law tradition in general and to the art of legal translation in particular.

Having reviewed the historical context of Spanish-English civil code translations in Part I, this article continues in Part II with descriptions of four civil code translations from the period and the individual translators' different approaches to civilian terminology. Part III examines contemporary scholars' mixed reviews of two of the four translations, while Part IV places negative reviews of the

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9. See *infra* Part IV.

10. See, e.g., Esin Öricü, *Something Old, Something New in Comparative Law*, 2 J. INT'L & COMP. L. 324, 324-27 (2015) (arguing that "[t]he history of comparative law runs parallel with the history of ideas" and briefly tracing development of discipline against trends in European thought); Jonathan Hill, *Comparative Law, Law Reform and Legal Theory*, 9 OXF. J. LEGAL STUD. 101, 109-10 (1989) (stating that "[t]hroughout this century trends in comparative law have been effected by world political events" and arguing that surrounding "political climate has a pervasive influence" on comparatist assumptions).

translators' preference for civilian vocabularies into broader perspective by analyzing early 20th century expectations of legal convergence and contemporary comparatist assumptions about the future of civilian vocabularies. Part V concludes with a discussion of the influence of political ideology on common law attitudes to the civil law, with a special focus on the role of mixed systems, including Louisiana, in the survival of "civilian English."

## II. BACKGROUND TO SPANISH-ENGLISH CIVIL CODE TRANSLATIONS (1899-1917)

Though mostly forgotten today, political developments at the turn of the last century brought the Hispanic world's civil law systems to the attention of American comparative law scholars at a critical moment in the discipline's development. Specifically, the creation of new mixed legal systems in Spain's former colonies of Puerto Rico and the Philippines brought American colonial judges and civil law scholars into sustained contact with Spanish civil law. This process repeated itself on a smaller scale in the Canal Zone, which the United States had acquired in 1904 in order to complete construction of the transoceanic Panama Canal.<sup>11</sup> At the same time, American business expansion in Latin America spurred widespread

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11. See, e.g., JOSÉ TRÍAS MONGE, *EL CHOQUE DE DOS CULTURAS JURÍDICAS EN PUERTO RICO* (1991) (examining the gradual introduction of common law doctrines into private law jurisprudence of Puerto Rico by American colonial judges during early decades of island's mixed legal system); Manuel Rodríguez Ramos, *Interaction of Civil Law and Anglo-American Law in the Legal Method of Puerto Rico*, 23 TUL. L. REV. 1, 1-22 (1948) (discussing the creation of mixed system in Puerto Rico); WINFRED LEE THOMPSON, *INTRODUCTION OF AMERICAN LAW IN THE PHILIPPINES AND PUERTO RICO* (U. of Arkansas Press 1989) (reviewing the creation of mixed legal system in American-controlled Philippines after Spanish-American War); WAYNE D. BRAY, *THE COMMON LAW ZONE IN PANAMA: A CASE STUDY IN RECEPTION* 94-122 (Inter American U. Press 1977) (documenting the development of mixed system in Canal Zone as well as gradual replacement of Colombian private law in Zone between 1904-1933). For a brief overview of these mixed systems' early development, see also Luis Muñiz-Argüelles, *Puerto Rico, in MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY* 381-93 (2d ed., Vernon Valentine Palmer ed. 2012) [hereinafter *MIXED JURISDICTIONS WORLDWIDE*]; Pacifico Agabin, *The Philippines, in MIXED JURISDICTIONS WORLDWIDE* at 452-80.

enthusiasm for the Pan-American movement's promise of uniform commercial law.<sup>12</sup> Over two decades, Pan-Americanism and legal mixing in the new insular possessions proved to be reliable catalysts for American comparison, as colonial judges applied both Spanish civil law and American public law in territorial courtrooms, influential law professors debated civil law-common law difference, and both groups speculated freely about the future relationship between the two legal traditions. As a result, American legal scholars produced a steady stream of literature concerning Spain and Latin America's legal systems, introduced new courses on Spanish civil law at leading law schools, and widened opportunities for further comparison by translating multiple civil codes from Spanish into English.<sup>13</sup>

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12. For the relationship of American business expansion in Latin America and Pan-American unification of law efforts, see Burton I. Kaufman, *United States Trade and Latin America: The Wilson Years*, 58 J. AM. HIST. 342, 343, 358-61 (1971). For inter-American conferences discussing unification of U.S. and Latin American law during early years of the 20th century, see Curtis Wilgus, *The Third International American Conference at Rio de Janeiro, 1906*, 12 HISP. AM. HIST. REV. 420, 424, 444-48 (1932) (discussing the unification of hemispheric law efforts at 1906 conference) and John Bassett Moore, *The Pan-American Financial Conferences and the Inter-American High Commission*, 14 AM. J. INT'L L. 343 (1920) (similar focus at Pan-American Financial Conference of 1915).

13. Early 20th century American legal scholars frequently commented about the stimulation of interest in civil law systems occasioned by American acquisition of civil law jurisdictions in the Spanish-speaking world. See, e.g., WILLIAM WIRT HOWE, *STUDIES IN THE CIVIL LAW* 10 (2d rev. ed., Cambridge U. Press 1905) (for Louisiana judge arguing: "We find ourselves confronted with new problems. Porto Rico, Cuba, and the Philippines contain some twelve millions of people whom we control, more or less, and whose laws and jurisprudence we must, to some extent, at least, understand."); 1 CHARLES PHINEAS SHERMAN, *ROMAN LAW IN THE MODERN WORLD* § 310 (Boston Book Co. 1917) (for Yale law professor stating: "For utilitarian reasons alone, ignoring all others, the American acquisition of Spain's former colonies has given a tremendous impulse to the study of Roman and Spanish law in American law schools.").

For early 20th century scholarship on Spanish civil law, see the numerous articles in the new Comparative Law Bureau's *Annual Bulletin* (1908-1914), including: Samuel P. Scott, *Spanish Jurisprudence Comparatively Considered*, 2 ANN. BULL. 14 (1909); Samuel P. Scott, *Spanish Criminal Law Compared with That Branch of Anglo-Saxon Jurisprudence*, 3 ANN. BULL. 62 (1910); Charles S. Lobingier, *A Decade of Juridical Fusion in the Philippines*, 3 ANN. BULL. 38 (1911) [hereinafter, Lobingier, *Juridical Fusion*]; Charles S. Lobingier, *The Spanish Law in the Philippines*, 4 ANN. BULL. 32 (1911) [hereinafter, Lobingier, *Spanish Law*]. A "Spanish Craze" in comparative law spread also to the classroom, where Yale, Columbia, and Michigan offered courses on Spanish law by 1910.



Most of the Spanish-English civil code translations were a response either to War Department administrative needs in new territories or were part of the Bureau's *Foreign Code Series*. Shortly after the initial occupation of Puerto Rico and the Philippines, the United States promptly repealed Spanish-era penal codes and codes of civil and criminal procedure, though local private law codes were, to varying degrees, left intact. A similar process was followed in the Canal Zone a few years later, except that the department of Panama had not promulgated its own civil code during the brief interval between independence from Colombia in 1903 and American acquisition of the isthmus in 1904; thus, the United States adopted the Colombian Civil Code of 1887 rather than local Panamanian legislation.<sup>14</sup> In each possession, the official policy of retaining private law while replacing public law, adopted previously in Louisiana and in several British colonies, led to the creation of hybrid legal systems administered by American colonial judges working alongside local judges trained in Spanish civil law. During the period, the Spanish language was not widely taught or known in the United States, and competent translation of primary legal authority was therefore essential.<sup>15</sup>

After the mixed systems were established, the locus of translation activity shifted to the Comparative Law Bureau, whose membership overlapped with scholars of international law as well as the inter-American bar in New York. Economic expansion in South

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*See* COLUM. U., PRESIDENT'S ANN. REP. 115-16 (1902) (listing Spanish civil law courses); U. MICH. DEP'T OF L., ANN. ANNOUNCEMENT 1902-1903 27 (1902) (same); YALE U., CATALOGUE 375 (1908) (same).

14. *See, e.g.*, Rodríguez Ramos, *supra* note 11, at 21 (describing the repeal of Puerto Rican penal code and codes of criminal and civil procedure, replacement with common law codes between 1902-1903); Lobingier, *Spanish Law*, *supra* note 13, at 39-40 (describing a similar process in Philippines between 1900-1902); BRAY, *supra* note 11, at 76, 96 & n.6 (describing a similar process in Canal Zone between 1905-1907).

15. *See, e.g.*, J. Preston Hoskins, *Statistical Survey of the Effect of the World War on Modern Language Enrollment in the Secondary Schools of the United States*, 10 MOD. LANG. J. 87, 88 & tbl.1 (1925) ('Comparative Table for the Whole United States') (survey showing less than 1% of American high school students enrolled in Spanish language classes during pre-World War I period).

America, as well as Pan-Americanism's emphasis on uniform legislation, created heightened demand for American lawyers with specialized expertise in Latin American law, and the Bureau's sponsorship of Spanish-English code translations was meant to facilitate practical and scholarly access to the fundamental laws of the most important trading partners in the region.<sup>16</sup>

The first Spanish-language civil code to be translated was the Spanish Civil Code of 1889. The Code had quickly been extended by Spain to her colonies and remained in force at the time Cuba, Puerto Rico, and the Philippines came under American control in 1898. The following year, the military governor of Havana, Major-General William Ludlow, ordered Walton, an American lawyer who had studied at the University of Havana and was now serving in the U.S. Volunteers, to translate the Code into English.<sup>17</sup> Walton's translation was completed in a matter of months, presumably in Cuba. He was assisted by a Cuban-born lawyer and political exile, Néstor Ponce de León, who had fled the Spanish colony for America in 1870; better remembered today as a correspondent of the revolutionary José Martí, Ponce de León was also a literary figure and sometime lexicographer in New York.<sup>18</sup>

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16. See, e.g., Andrew G. Peters, *Importance of the Study of Latin-American Law*, 4 AM. L. SCH. REV. 208, 210 (1916) (Treasury official's address to ABA meeting advocating law school teaching of civil law systems as part of wider effort by legal profession to support American business expansion in Latin America); Phanor J. Eder, *Pan-Americanism and the Bar*, 43 ANN. REP. A.B.A. 340, 341 (characterizing the knowledge of civil law systems as "the first essential" if American bar to play constructive role in Pan-American movement).

17. THE SPANISH CIVIL CODE IN FORCE IN SPAIN, CUBA, PUERTO RICO, AND THE PHILIPPINES (Clifford S. Walton ed., Clifford S. Walton and Néstor Ponce de León trans., La Propaganda literaria Printing House 1899) [hereinafter, Span. Civ. C.].

18. See RAIMUNDO CABRERA, CUBA Y SUS JUECES 297-98, 318 (Compañía Lévytype 1891). Ponce de León returned to Havana shortly after the Spanish-American War and was appointed director and custodian of the Cuban National Archives. See [U.S. ARMY] HEADQUARTERS DIV. OF CUBA, CIVIL ORDERS AND CIRCULARS 167 (1899) (appointment order).

Over the next two years, the War Department translated dozens of Spanish-era laws for use in the new possessions.<sup>19</sup> Among the department's principal translators was Francis Leon Joannini, the son of an Italian minister to Mexico. Born in Italy, Joannini spent part of his youth in Mexico and was presumably fluent in Spanish.<sup>20</sup> As official translator for the Insular Affairs division, Joannini had already translated several Filipino legal codes by the time the Canal Zone approached him to translate the Colombian Civil Code. An Argentine code translation for the Bureau was completed in 1913 (though not published for several years). At the time of his tragic death in an automobile accident in 1917, Joannini was at work translating the Peruvian Civil Code and drafting an English dictionary of Spanish legal terms.<sup>21</sup>

Joannini's last two civil code translations were part of the Bureau's aforementioned efforts to translate foreign law into English.<sup>22</sup> Although the Bureau commissioned or agreed to publish only six translations during its short existence, all but one (R.P. Shick's translation of the Swiss Civil Code) were Spanish or Latin American codes. In the case of the Argentine and Peruvian Civil Codes, the translations were entrusted to a revision committee chaired by Phanor Eder, a Colombian-born lawyer based in New York. An enthusiastic proponent of Pan-Americanism, Eder was a major figure among New York's inter-American bar up until his retirement in the 1960s.<sup>23</sup> The last translation approved by the Bureau was Wheless's

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19. *E.g.*, DIV. OF CUSTOMS & INSULAR AFF. [DCIA], TRANSLATION OF THE NOTARIAL LAWS IN FORCE IN CUBA AND PUERTO RICO (1899); [DCIA], TRANSLATION OF LAW OF PORTS IN FORCE IN THE ISLAND OF CUBA (1900).

20. *See* "P.J.E.", *Necrology: Frank Joannini*, 3 A.B.A. J. 104-05 (1917) (obituary with biographical details).

21. *See A Deplorable Loss to Pan-Americanism*, 6 SO. AMER. 33 (1917) (additional biographical information).

22. *See generally* W.W. Smithers, *Proceedings of the Comparative Law Bureau*, 31 ANN. REP. A.B.A. 1001, 1004 (1907) (listing the Bureau's initial objectives, including translation of foreign legislation into English).

23. *See To Phanor James Eder*, 18 AM. J. COMP. L. 479 (1970) (issue dedication). As early as the 1920s, Eder and Wheless were among a small, recognized group of New York lawyers representing American interests in Latin America.

Brazilian Civil Code. Like Eder, Wheless was one of a handful of New York-based lawyers with experience representing clients in Latin America; prior to the Mexican Revolution, he had practiced law in that country and had written several articles on the subject of Mexican law.<sup>24</sup> Indeed, there was a significant overlap between the Bureau's translators, its Latin American editorial staff, and this small, cosmopolitan group of expatriate and émigré lawyers.<sup>25</sup>

A. *Walton's Spanish Civil Code Translation (1899): A Common Lawyer's Approach*

The military order instructing Walton to prepare a translation of the Spanish Civil Code was dated March 21, 1899; he was honorably discharged from the Army seven weeks later, on June 13.<sup>26</sup> If Walton completed his translation before he left military service, he must have worked quickly. The assumption that the translation's publication was expedited finds further support in the numerous typographical errors.<sup>27</sup> A first edition nevertheless appeared that same year as *The Spanish Civil Code*, while a second edition, including a new historical introduction to Spanish law, was published in 1900 under the title *The Civil Law in Spain and Spanish-America*.<sup>28</sup> By the time this second, expanded edition was published, Walton was pursuing

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See ENRIQUE GIL, THE IMPORTANCE OF THE STUDY OF ARGENTINE AND BRAZILIAN CIVIL LAW 3 (1921).

24. E.g., Joseph Wheless, *A Lawsuit in Mexico*, 22 GREEN BAG 612 (1910); Joseph Wheless, *The Mexican Notarial System*, 5 ANN. BULL. 42 (1912).

25. See *Organization and Work of the Bureau of Comparative Law*, 1 A.B.A. J. 591, 592 (1915) (listing the Bureau's editorial staff members for 1915). Shick was chairman, while Eder, Wheless, and Robert Kerr were editors for Latin America, Charles Lobingier for the Philippines, and Scott and Wheless for Spain. Wheless and Scott both translated codes for the Bureau, while Eder, Wheless, and Kerr served on multiple revision committees.

26. See *Special Order No. 68* in Span. Civ. C. (preface) (March 21, 1899); [U.S. ARMY] ADJUTANT-GENERAL'S OFF., OFFICIAL REGISTER OF OFFICERS OF VOLUNTEERS 141 (1900) (listing discharge dated June 13, 1899).

27. See, for example, Span. Civ. C. 39-48, which alone contain seven misspellings.

28. CLIFFORD STEVENS WALTON, THE CIVIL LAW IN SPAIN AND SPANISH-AMERICA (1900).

further studies ('doctorando') at the University of Madrid.<sup>29</sup> Unfortunately, while Walton supplemented this second edition with various citations to several other Latin American civil codes, there is no evidence from the first edition suggesting which sources, if any, he may have used in preparing the original translation.

Regardless of sources or legal training, Walton's translation of the Spanish Civil Code has a decidedly "common law" feel to it. Throughout the translation, Walton rendered basic civil law concepts into legal English rather than transliterate Spanish civil law concepts or use English civilian terminology. Thus, *servidumbres*, *mandato*, and *tutela* are translated as 'easements', 'agency', and 'guardianship' rather than less-familiar civil law English terms such as *servitudes*, *mandate*, and *tutorship*.<sup>30</sup> Likewise, *tutela dativa* is rendered 'guardianship by appointment' rather than the more-civilian *dative tutorship*.<sup>31</sup>

Nowhere is Walton's method more apparent than in Book II (property), where *bienes muebles* and *bienes inmuebles* have been translated as 'personal property' and 'real property', respectively, rather than *movables* and *immovables*.<sup>32</sup> Moreover, Walton introduced legal English's many distinctions between realty and personalty into his translation, even though Spanish civil law's lexicon does not usually make such distinctions. Thus, civil law *enajenación* is often rendered 'conveyance' in the context of immovables, yet 'alienation' or 'sale' when referring to movables.<sup>33</sup> Throughout his

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29. *Id.* at tit.p.

30. See Span. Civ. C. Bk. II, tit. VII (*servidumbres* = easements); Bk. IV, tit. IX (*mandato* = agency); Bk. I, tit. IX (*tutela* = guardianship).

31. See, e.g., Span. Civ. C. Bk. I, tit. IX, ch. 4 (*tutela dativa* = guardianship by appointment).

32. See, e.g., Span. Civ. C. Bk. II, tit. I (*bienes muebles*, *bienes inmuebles* = personal property, real property).

33. See, e.g., Span. Civ. C. Bk. III, tit. III, arts. 974-976 (*enajenación* = 'conveyance' in context of immovables); Bk. III, tit. III, art. 978; Bk. II, tit. VI, art. 494 (*enajenación* = 'alienation', 'sale' in context of movables). Compare Louisiana law: "In Louisiana, 'Land is not **conveyed**' by deed but is sold...One sells land by the same contract and in the same way – in terms of theory – as one sells an automobile." N. Stephan Kinsella, *A Civil Law to Common Law Dictionary*, 54 LA. L. REV. 1265, 1289 (1993) (emphasis in original) (citing Patrick H. Martin

translation, the long shadow of English property law (and its effect on legal English) is apparent: *plena propiedad* is ‘fee simple’,<sup>34</sup> *desahucio* is ‘ejectment’,<sup>35</sup> and *perturbación* is ‘trespass’.<sup>36</sup>

The Army lawyer was equally proactive in converting possessory actions and obligations into common law English. In Book II (property), the Spanish action *reivindicar* is translated ‘recover’, while in Book IV (obligations), *causa* is ‘consideration’ (not *cause*),<sup>37</sup> *obligaciones solidarias* are ‘joint obligations’,<sup>38</sup> *transacción* is ‘compromise’,<sup>39</sup> and *confusión* is (usually) ‘merger’.<sup>40</sup> At times, Walton’s gratuitous use of legal English serves little purpose other than to clothe his translation in the familiar legal English of Anglo-American law. Thus: ‘banns’ for *proclamas*,<sup>41</sup> ‘Act of God’ for *siniestro*,<sup>42</sup> ‘wear and tear’ for *deterioros*,<sup>43</sup> and ‘writ of seizure’ for *mandamiento de embargo de bienes*.<sup>44</sup> Throughout the translation, the common lawyer feels very much at home, though possibly misled about the subtle differences in terminology.

The purpose in elaborating Walton’s translation preferences is not to suggest that Walton was ignorant of the distinctions between

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& J. Lanier Yeates, *Louisiana and Texas Oil & Gas Law: An Overview of the Differences*, 52 LA. L. REV. 769, 787-88 (1992).

34. See Span. Civ. C. Bk. III, tit. II, art. 634 (*plena propiedad* = fee simple).

35. See Span. Civ. C. Bk. IV, tit. VII, art. 1656 (*acción de desahucio* = ejection).

36. See Span. Civ. C. Bk. IV, tit. VI, art. 1560 (*perturbación* = trespass).

37. See Span. Civ. C. Bk. II, tit. II, art. 348 (*reivindicar* = recover); Bk. IV, tit. II, arts. 1274-1277 (*causa* = consideration).

38. See Span. Civ. C. Bk. IV, tit. I, arts. 1136-1137 (*obligaciones solidarias* = joint obligations).

39. See, e.g., Span. Civ. C. Bk. IV, tit. XIII, ch. 1 (*transacción* = compromise).

40. See, e.g., Span. Civ. C. Bk. IV, tit. I, art. 1156 (*confusión* = ‘merger’ in context of extinction of obligations); Bk. II, tit. VII, art. 546 (*confusión* = ‘merger’ in context of extinction of servitudes); but see Bk. IV, tit. I, arts. 1192-1194 (*confusión* = ‘confusion’ in context of extinction of obligations).

41. See, e.g., Span. Civ. C. Bk. I, tit. IV, art. 44 (*proclamas* = (marriage) banns).

42. Span. Civ. C. Bk. II, tit. VI, art. 484 (*siniestro* = Act of God).

43. See Span. Civ. C. Bk. IV, tit. X, art. 1746 (*deterioros* = wear and tear).

44. See Span. Civ. C. Bk. IV, tit. II, art. 1297 (*mandamiento de embargo de bienes* = writ of seizure).

the two legal traditions or of alternative civilian English vocabularies. Indeed, some of the civil law concepts in the Spanish Civil Code were substantially equivalent to their common law counterparts, and the use of legal English was not likely to lead to confusion of interpretation, although there was certainly this risk in several instances. Moreover, Walton was perfectly capable of rendering Spanish civil law concepts into English by transliteration or by using jurisdiction-neutral English civil law terms. For example, *donación* is ‘donation’ (not, say, *inter vivos* gift), and *vicios redhibitorios* are ‘redhibitory vices’,<sup>45</sup> while Walton hints at the important distinction between cause and consideration when he places the Spanish concept in parentheses on the initial use of the word (i.e., ‘consideration (*causa*)’), although admittedly without further elucidation.<sup>46</sup> In a subsequent article for the *Annual Bulletin*, Walton even criticized War Department translators of the Filipino mortgage law, alleging confusion in their use of ‘property rights’ for *derechos reales*.<sup>47</sup>

Nevertheless, Walton clearly preferred to use common law English terms for civil law concepts wherever possible. The risk of misleading American lawyers into assuming that the two systems were broadly interchangeable was a risk Walton was willing to take, if he considered it a risk at all. Why the translator believed that a legal translation that de-emphasized legal difference was desirable is not certain. That the original translation’s target audience was military and civilian administrators is no doubt an important part of the explanation, for such men were usually trained in the common law, if

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45. See Span. Civ. C. Bk. III, tit. II (*donación* = donation); Bk. IV, tit. IV, arts. 1491, 1499 (*redhibición*, *vicios redhibitorios* = redhibition, redhibitory vices).

46. See Span. Civ. C. Bk. IV, tit. II, art. 1274 (*causa*). The important distinction between cause and consideration has long been recognized. See, e.g., GUTTERIDGE, *supra* note 1, at 117 (“Comparative lawyers are only too familiar with the kind of problem which lies concealed behind such words as *causa* and *consideration*.”); see also GREGORY W. ROME & STEPHAN KINSELLA, *LOUISIANA CIVIL LAW DICTIONARY* 7 (Quid Pro Books 2011) (“Cause is not the same thing as consideration.”).

47. See Clifford S. Walton, *Interests of a Mortgagee in Real Property under the Common and Civil Law*, 5 ANN. BULL. 63, 66 (1912).

they had any legal training at all. It is also probable that Walton lacked access in Havana to English translations of civil law materials using civilian vocabularies, although these were certainly available in the United States.<sup>48</sup> Yet even in the second edition (intended for a more academic readership), Walton made few changes, and he continued to use common law English terms to describe subtly-different Spanish civil law concepts in a subsequent article for the Comparative Law Bureau.<sup>49</sup>

An equally likely explanation for Walton's translation method was common practice of the time, which was relatively tolerant of translations of civil law materials into the legal English of the common law.<sup>50</sup> It is important to note that this practice was conventional even among English and American civil law scholars and judges who otherwise exhibited a serious interest in comprehending the nuances of civil law-common law difference.<sup>51</sup>

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48. See, for example, the popular American edition of Harris's translation of the *Institutes* using *mandatary*, *dative tutor*, *compensation*, and *revendication*: THOMAS COOPER, *INSTITUTES OF JUSTINIAN* 61, 284, 347, 445 (2d ed. 1841).

49. Clifford S. Walton, *The Spanish Law of Prescription*, 2 ANN. BULL. 25, 26-28 (1909) (using the terms 'adverse possession', 'tort', and 'real property' for various Spanish civil law concepts).

50. This observation was previously made by Joseph Dainow in his explanatory note to the 1940 compilation of the Louisiana civil codes (with cross-references to the Code Napoléon), in which he criticized both Wright's (1908) and Cachard's (1895) English translations of the French civil code. See *Explanatory Notes*, in COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA, LOUISIANA LEGAL ARCHIVES vol. 3, at xiii, xviii (State of Louisiana 1940) (regretting that French-English translations did not always use "the language of the civilian") (cited in Olivier Moréteau, *The Louisiana Civil Code in French: Translation and Retranslation*, 9 J. CIV. L. STUD. 223, 245 & nn.42-43 (2016) (briefly discussing problems of French civil law translations using legal English)). These problems are similarly present in other contemporary civil code translations. See, e.g., THE CIVIL CODE OF JAPAN (John Harington Gubbins trans., Maruya 1897) (translation of Japanese Civil Code using predominantly common law vocabulary).

51. See, e.g., E. BLACKWOOD WRIGHT, THE CODE NAPOLEON; BEING THE FRENCH CIVIL CODE *passim* (1908) (for British colonial judge comparing civil law and common law doctrines throughout translation but nevertheless rendering many French civil law terms into legal English). Wright was chief justice of the Seychelles.



*B. Joannini's Colombian Civil Code Translation (1905): A Civil Law Alternative*

By contrast, Joannini's approach to his Colombian Civil Code translation was radically different to Walton's, and we know much more about it. First, Joannini strove as much as possible to render Colombian private law concepts into "civil law English" rather than legal English. The desire to present civil law concepts in English without losing the tradition's distinctive categories and terminology frequently meant turning to the civil law entries in *Black's Law Dictionary*, or in Books II-IV, adopting the civilian vocabulary of Louisiana's Civil Code. In an "Explanatory Note," Joannini stated his reasons for avoiding use of legal English for civil law concepts:

An effort has been made to secure as correct a translation as possible, and in some cases the translator may be accused of sacrificing what may be called good English for fidelity to the original text. He has been constantly on guard against making an interpretation of law instead of a translation.<sup>52</sup>

Joannini's policy of avoiding "making an interpretation of law" included more than merely "sacrificing what may be called good English." It meant consistently reducing the use of technical legal English in order to limit opportunities for confusion by Americans trained exclusively in the common law tradition, as will be demonstrated in greater detail below.

Second, Joannini, unlike Walton, was more forthcoming about the materials he used for his translation: in a "List of Works Consulted in Translating the Civil Code," Joannini conveniently listed his principal sources.<sup>53</sup> Among those which the translator consulted were Angarita's *Código Civil Nacional (de Colombia) Concordado* (1888), two Spanish legal dictionaries (those of Alcubilla and Escriche), and, most importantly, *Black's Law Dictionary* and Merrick's 1900 edition of the Louisiana Civil Code of 1870 (which itself

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52. See *Explanatory Note* in Col. Civ. C. at 10.

53. See *id.* at 9 for *List of Works Consulted*.

includes cross-references to corresponding articles in the Code Napoléon).<sup>54</sup> The “List of Works Consulted” was not exhaustive, however. Elsewhere in the translation, Joannini cited articles in the Chilean Civil Code,<sup>55</sup> Howe’s first edition of *Studies in the Civil Law*,<sup>56</sup> and Mackeldy’s *Handbook of Roman Law*.<sup>57</sup> Moreover, he referred on at least one occasion to various unnamed Spanish and French laws “to which the translator has had access,” while in a discussion of Book IV, title VII, Joannini indicated that he had consulted the Spanish, French, Italian, Mexican, and Dutch Civil Codes in an effort to better understand the title’s subject matter.<sup>58</sup> In retrospect, his translation was a serious effort at legal comparison.

The result of Joannini’s different approach, including his reliance on *Black’s* and the Louisiana Civil Code, was a thoroughly civilian-feeling translation of Colombian private law. Where Walton had used ‘guardianship’ for civil law *tutela*, Joannini instead used *tutorship* (as well as related terms such as *dative tutor*, *curator*, etc.).<sup>59</sup> Where Walton chose ‘easements’, Joannini chose *servitudes*.<sup>60</sup> Where Walton preferred ‘agent’, Joannini preferred *mandatary*.<sup>61</sup> *Cargas* are never ‘liens’. ‘Writs’, ‘trespass’, and ‘ejectment’

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54. *Id.* (citing various sources, including MARCELO MARTÍNEZ ALCUBILLA, DICCIONARIO DE LA ADMINISTRACIÓN ESPAÑOLA (1892-1902), JOAQUÍN ESCRICHE, DICCIONARIO RAZONADO DE LEGISLACIÓN Y JURISPRUDENCIA (1888), REVISED CIVIL CODE OF LOUISIANA (Edwin T. Merrick ed., F. F. Hansell & Bro., Limited 1900) [hereinafter, La. Civ. C. (1870)], and HENRY C. BLACK, A DICTIONARY OF LAW (1891) [hereinafter, BLACK’S LAW DICTIONARY]); *see also* John H. Tucker, *Source Books of Louisiana Law*, 6 TUL. L. REV. 280, 296 (1931) (discussing Merrick’s 1900 edition).

55. *See, e.g.*, Col. Civ. C. at 71 & n.†, 86 & n.\* (citing to Chilean Civil Code arts. 208 & 266).

56. *Id.* at 153 & n.\* (citing WILLIAM WIRT HOWE, STUDIES IN THE CIVIL LAW 79-80 (1896), for a discussion of civil law concept of real rights).

57. *Id.* at 164 & n.\* (citing F. MACKELDY, HANDBOOK OF THE ROMAN LAW § 271 (T. & J. W. Johnson 1883), defining “specification”).

58. *See id.* at 219 & fn.† (regarding assignments); *id.* at 326 & n.\* (regarding facultative obligations).

59. *Compare* Span. Civ. C. Bk. I, tit. IV, art. 50 (*tutor* = guardian), *with* Col. Civ. C. Bk. I, tit. XXII (*tutor*, *tutela* = tutor, tutorship) *and* Bk. I, tit. XXII, ch. 4 (*tutor dativa* = dative tutor); *see also* Kinsella, *supra* note 33, at 1293.

60. *See* Col. Civ. C. Bk. II, tit. XI (*servidumbres* = servitudes).

61. *Compare* Span. Civ. C. Bk. IV, tit. IX (*mandato* = agency), *with* Col. Civ. C. Bk. IV, tit. XXVIII (*mandato*, *mandatario* = mandate, mandatary).

are entirely lacking. *Reivindicación* is *reivindicación* (not mere ‘recovery’).<sup>62</sup>

Based on even a cursory review, several important conclusions can be drawn from Joannini’s translation choices. First, Joannini preferred transliteration of Spanish-language civil law terms, in some circumstances even where the potential for confusion with legal or colloquial English was significant: thus, *compensación* is usually rendered *compensation*, not ‘set-off’; *transacción* is *transaction*, not ‘compromise’; and *confusión* is *confusion*, not ‘merger’.<sup>63</sup>

Second, Joannini avoided legal English property terminology with its different distinctions between real estate and chattels, as this might have implied an exaggerated equivalence with distinctive civilian property law categories. Thus, in Joannini’s translation, *bienes muebles* are, correctly, *movables* and *bienes inmuebles*, *immovables*; only *bienes raíces* are *real property*.<sup>64</sup> Absent is Walton’s invented distinction between sale of movables and conveyance of immovables: *enajenación* is usually translated *alienation* or *sale*, regardless of context.<sup>65</sup>

Third, in Joannini’s search for an English articulation of civil law concepts, he frequently relied on the distinctive legal English of Louisiana’s civil law tradition, in particular the special civil law English terminology of the Louisiana Civil Code. Thus, *gananciales*

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62. See Col. Civ. C. Bk. II, tit. XII (*reivindicación* = *reivindicación*).

63. See, e.g., Col. Civ. C. Bk. IV, tit. XIV, art. 1625 (*compensación, transacción, confusión* = *compensation, transaction, confusion*). Cf. Levasseur & Trahan, *infra* note 178, at 118, 127 (for English translators of Cornu’s *Vocabulaire Juridique* warning against translating *compensation* and *confusion* as common law *set-off* and *merger*).

64. See Col. Civ. C. Bk. II, tit. I, ch. 1, 2 (*bienes muebles, bienes inmuebles, bienes raíces* = *movables, immovables, real property*); see also Bk. III, tit. XIII, art. 1457 (for rare use of ‘realty’).

65. See, e.g., Col. Civ. C. Bk. I, tit. XXX, art. 576 (for alienation of movables); Bk. I, tit. XIX, art. 345 (for alienation of immovables); but see Col. Civ. C. Bk. I, tit. IX, art. 182 (for rare use of ‘convey’ for Spanish verb *enajenar*).

are *acquets and gains*,<sup>66</sup> *desheredación* is *disinherison*,<sup>67</sup> *obligaciones solidarias* are *solidary obligations*,<sup>68</sup> and *prestaciones mutuas* are *mutual prestations*.<sup>69</sup> Both *lesión grave* and *lesión enorme* are translated *lesion beyond moiety*,<sup>70</sup> and *beneficio de excusión* appears as *benefit of discussion*.<sup>71</sup> The first and last examples are both instances where Joannini departed from his usual preference for transliteration in order to follow the Louisiana Code's unique vocabulary.

Indeed, even in cases where Joannini had a choice between using a particular English civil law or Scots law term (which are plentiful in the first edition of *Black's*), the translator frequently preferred the Louisiana term instead. Thus, *curador de bienes* is translated as *curator ad bona* rather than *curator bonis*.<sup>72</sup> Elsewhere, *título vicioso* is *vicious title* (as opposed to Walton's more common law-sounding

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66. See, e.g., Col. Civ. C. Bk. IV, tit. XXII, ch. 5 (*gananciales* = acquets and gains). "Community of acquets and gains. The community property matrimonial regime of Louisiana under which spouses are co-owners of certain property that either spouse acquires during the marriage." ROME & KINSELLA, *supra* note 46, at 9 (citing LA. CIV. CODE ANN. arts. 2327, 2338-2340 (2011)); see also BLACK'S LAW DICTIONARY 28 (10th ed., Bryan A. Garner ed. 2014) (identifying *acquets and gains* as a Louisiana law term); cf. JOAQUÍN ESCRICHE, ELEMENTS OF THE SPANISH LAW 37-38 (Bethel Coopwood trans. 1886) (Texas lawyer using the term *ganancial property* instead).

67. See Col. Civ. C. Bk. III, tit. V, ch. 4 (*desheredación* = disinherison).

68. See Col. Civ. C. Bk. IV, tit. IX (*obligaciones solidarias* = solidary obligations). For a recent discussion of the problem of translating solidary obligations as joint and several, see Moréteau, *supra* note 1, at 706, 709.

69. See, e.g., Col. Civ. C. Bk. II, tit. XII, ch. 4 (*prestaciones mutuas* = mutual prestations). The English 'prestation' survives also in Puerto Rican legal English. See, e.g., 31 LPPRA § 3048 ('mutual prestations').

70. See Col. Civ. C. Bk. IV, tit. XXIII, ch. 13 (*lesión enorme* = lesion beyond moiety); Bk. III, tit. VII, art. 1291 (*lesión grave* = same).

71. See Col. Civ. C. Bk. IV, tit. XXXV, arts. 2383-84 (*beneficio de excusión* = benefit of discussion). Plea of discussion has since been abolished in Louisiana, but Joannini's translation cites the earlier code articles that were then in effect. See LA. CIV. CODE ANN. art. 3045 cmt. (a) (2017) ("This Article ... abolishes the pleas of division and discussion formerly recognized in C.C. Arts. 3045-3051 (1870).").

72. Compare Col. Civ. C. Bk. I, tit. XXX (*curador de bienes* = curator ad bona), with LA. CODE PRACTICE art. 958 (curator ad bona); see also Welsh v. Baxter, 45 La. Ann. 1062, 1064 (1893) (discussing 1830 abolition of curators ad bona in Louisiana). See BLACK'S LAW DICTIONARY, *supra* note 54, at 309; *Black's* lists only the Scots law 'curator bonis'.

‘flawed title’),<sup>73</sup> and *discernimiento* (for appointment of *dative tutors*) is *confirmation*.<sup>74</sup> Similarly, Joannini’s preference for translating *tenencia* as *seizin* rather than *tenancy* (particularly in Book III (successions)) appears to imitate Louisiana legal English’s use of the former term in its own law of successions.<sup>75</sup>

Despite an obvious preference for civil law terminology, Joannini did not entirely avoid technical legal English. There are occasional references in his Colombian Civil Code translation to *cestui que trustent*,<sup>76</sup> *flotsam and jetsam*,<sup>77</sup> and other common law terms. Both *dolo* and *fraude* have been (perhaps confusingly) rendered *fraud*, and Joannini occasionally used common law terms for unrelated Colombian civil law concepts.<sup>78</sup> For the most part, however, Joannini confined legal English terms such as ‘agency’, ‘bailments’, and ‘easements’ to the translation’s index, where readers are directed to search instead for *mandate*, *loans for use* and *consumption*, and *servitudes*.<sup>79</sup> The result is a civil code translation well on its way to being purged of English property and contract law terminology.

Joannini’s translation raises the interesting question: Why did he rely so heavily on the Louisiana Civil Code for articulating the civil law in English? There are at least two plausible explanations. First, Joannini may have been told to do so by the Isthmian Canal Commission. Such a possibility is raised by parallel developments in Puerto Rico, where the local revision commission of two Americans and one Puerto Rican had recently incorporated language from the

73. Compare Col. Civ. C. Bk. IV, tit. XXII, art. 1792 (*título vicioso*), with La. Civ. C. art. 3452 (1870) (“vicious and defective title”).

74. Compare Col. Civ. C. Bk. I, tit. XXIII, art. 463 (*discernimiento* = confirmation), with La. Civ. C. art. 260 (1870) (judicial “confirmation” of tutors).

75. See, e.g., Col. Civ. C. Bk. III, tit. VII, art. 1297 (*tenencia* = *seizin*); cf. La. Civ. C. arts. 940-949 (1870) (for *seizin of heirs* in Louisiana law of successions).

76. See, e.g., Col. Civ. C. Bk. II, tit. VIII, art. 807 (*fideicomisario* = *cestui que trustent*).

77. See Col. Civ. C. Bk. II, tit. IV, art. 710 (*especies náufragas* = *flotsam and jetsam*).

78. See Col. Civ. C. Bk. II, tit. IX, art. 846; Bk. II, tit. VII, art. 768 (*dolo, fraude*); Bk. III, tit. V, art. 1245 (*cuarta de mejoras* = quarter betterments); cf. LA. C.C. ANN. art. 1231 (2017) (discussing “advantages” and “extra portions”).

79. See, e.g., Col. Civ. C. at 599, 602, 622 (index terms).

Louisiana Code into Book I of the island's Spanish-era Civil Code.<sup>80</sup> By making Canal Zone law look and sound more like Louisiana law, the Canal Zone government may have hoped that American colonial judges on the Isthmus, though unfamiliar with the civil law tradition generally, might nevertheless be able to interpret the local civil code using Louisiana jurisprudence. There is only scattered evidence from the Canal Zone's law reports (1905-1926) of local judges actually applying Louisiana law in this way (assuming they even had access to Louisiana decisions), and, in any event, the Canal Zone's mixed legal system did not survive the 1930s.<sup>81</sup> Nonetheless, it is possible that Joannini's many cross-references to Louisiana Code articles and use of the state's legal English were meant to facilitate comparative use of Louisiana jurisprudence by American judges in Panama.

A chief problem with this explanation, however, is scattered evidence that Joannini began his translation work without the Louisiana Civil Code. First, there are no cross-references to Louisiana Code articles in Book I (persons), although these are frequent elsewhere in the translation.<sup>82</sup> Second, the use of distinctive Louisiana civil law terms such as *disinherison*, *lesion beyond moiety*, and *benefit of discussion*, is irregular and relatively infrequent until Book II (property), and is most pronounced in Books III and IV (successions, obligations). Third, although, as a rule, Joannini preferred civilian terminology to legal English, there are several instances in

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80. 1 LUIS MUÑOZ MORALES, RESEÑA HISTÓRICA Y ANOTACIONES AL CÓDIGO CIVIL DE PUERTO RICO 22-44 (Junta Editora de la Universidad de Puerto Rico 1947) (discussing the work of the 1901-1902 revision commission including adoption of articles from Louisiana code).

81. See, e.g., *Fitzpatrick v. Panama R.R. Co.*, 2 C.Z. Rep. 111 (C.Z. 1913) (for a rare example of Canal Zone court applying Louisiana jurisprudence to question of Colombian private law); see also Collins, *supra* note 7, at 233 (describing the Colombian Code's repeal in 1933 and replacement by a new code based on California law). The adoption of a common-law code greatly reduced the potential influence of Louisiana jurisprudence in the Zone's future legal development.

82. See, for example, Joannini's citations to La. Civ. C. arts. 533 *et seq.* (1870) for parallel references to Louisiana law of usufruct, Col. Civ. C. at 182; La. Civ. C. arts. 2520 *et seq.* (1870) for revendication, Col. Civ. C. at 397; La. Civ. C. arts. 3176 *et seq.* (1870) for antichresis, Col. Civ. C. at 495; etc.

Book I where the translator initially used a common law term, such as ‘convey’ or ‘set-off’, only to abandon it by the middle of Book II, possibly suggesting a change of approach early on in the translation process.<sup>83</sup> In further support of this conclusion, Joannini’s inconsistent alternation between translating *fianza* and *caución* as *bond*, *surety*, and *suretyship* appears to stabilize only in Book IV, or around the time that the translator would have compared the Colombian articles to the Louisiana Civil Code’s articles 3035 *et seq.* on suretyship.

A second explanation, therefore, seems more likely: Joannini decided to consult the Louisiana Civil Code only after encountering numerous citations to its articles in the civil law entries in *Black’s Law Dictionary*.<sup>84</sup> The fact that Alcubilla’s 1892 *Diccionario* (like many legal encyclopedias and dictionaries in the civil law tradition) cites to code articles for definitions of Spanish civil law terms may have reinforced in Joannini’s mind the utility of consulting an English-language civil code for his own translation work. By doing so, Joannini’s translation became truly comparative, as he checked his own definitions and civil law English vocabulary against that of the Louisiana Civil Code.

That Joannini was satisfied with the approach is evident from the fact that he continued to employ Louisiana’s civilian terminology in his subsequent translation of the Argentine Civil Code.

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83. See, e.g., Col. Civ. C. Bk. I, tit. IX, art. 182 (*enajenar* = convey); Bk. I, art. 207 (*simple mandatario* = simple agent); Bk. II, tit. VII, art. 818 (*compensar* = set off [n.]). By Bk. III, Joannini has abandoned *convey*, while in Bk. III, tit. XXVIII, he uses *mandatary*, and in Bk. IV, tit. XVII, he uses *compensation*.

84. See, e.g., entries for ‘curator’, ‘immovable’, ‘servitudes’ in BLACK’S LAW DICTIONARY, *supra* note 54, at 309, 593, 1085 (citing Louisiana Civil Code articles for civil law terms appearing in Books I and II).

**Table 1.** Spanish Civil Law Terms: Translation Choices in Walton and Joannini

Spanish Civil Law Term	Walton's Translations	Joannini's Translations
<i>gananciales</i> <sup>85</sup>	profits of the conjugal society ( <i>gananciales</i> )	acquets and gains*
<i>enajenación</i> (of immovables) <sup>86</sup>	conveyance	alienation or sale [n.]
<i>enajenación</i> (of movables) <sup>87</sup>	alienation	alienation
<i>desheredación</i> <sup>88</sup>	disinheritance	disinherison*
<i>tutela dativa</i> <sup>89</sup>	guardianship by appointment	dative tutorship*
<i>bienes muebles, bienes inmuebles</i> <sup>90</sup>	personal property, real property	movables, immovables
<i>reivindicar</i> [v.] <sup>91</sup>	recover [v.]	revendicate [v.]
<i>plena propiedad</i> <sup>92</sup>	fee simple	full ownership
<i>dolo</i> [n.] <sup>93</sup>	deceit ( <i>dolo</i> ) or fraud	<i>dolus</i>
<i>servidumbres</i> <sup>94</sup>	easements	servitudes
<i>obligaciones solidarias</i> <sup>95</sup>	joint obligations	solidary obligations*
<i>confusión</i> <sup>96</sup>	merger	confusion

85. Span. Civ. C. Bk. I, tit. IV, art. 72; Col. Civ. C. Bk. IV, tit. XXII, ch. 5.

86. Span. Civ. C. Bk. III, tit. III, arts. 974-976; Col. Civ. C. Bk. IV, tit. XXIII, art. 1887 (alienation of immovables).

87. Span. Civ. C. Bk. III, tit. III, art. 978; Col. Civ. C. Bk. I, tit. XXX, art. 576 (alienation of movables).

88. Span. Civ. C. Bk. III, tit. III, arts. 848-857; Col. Civ. C. Bk. III, tit. V, arts. 1258-1259.

89. Span. Civ. C. Bk. I, tit. IX, ch. 4; Col. Civ. C. Bk. I, tit. XXII, ch. 4.

90. Span. Civ. C. Bk. II, tit. I; Col. Civ. C. Bk. II, tit. I.

91. Span. Civ. C. Bk. II, tit. II, art. 348; Col. Civ. C. Bk. II, tit. XII.

92. Span. Civ. C. Bk. II, tit. III, art. 399; Arg. Civ. C. Bk. III, tit. X, art. 2909.

93. Span. Civ. C. Bk. II, tit. V, art. 457; Span. Civ. C. Bk. IV, tit. I, art. 1102; Arg. Civ. C. Bk. II, § II, tit. I, ch. 2.

94. Span. Civ. C. Bk. II, tit. VII; Col. Civ. C. Bk. II, tit. XI.

95. Span. Civ. C. Bk. IV, tit. I, art. 1136; Col. Civ. C. Bk. IV, tit. IX.

96. Span. Civ. C. Bk. II, tit. VII, art. 546; Col. Civ. C. Bk. II, tit. XI, art. 942 (both in context of servitudes).



<i>causa</i> <sup>97</sup>	consideration	'consideration ( <i>causa</i> )' on initial use; <i>cause</i> thereafter
<i>perturbación</i> <sup>98</sup>	trespass [n.]	disturbance [n.]
<i>mandato, mandatorio</i> <sup>99</sup>	agency, agent	mandate, mandatary
<i>beneficio de escusión</i> <sup>100</sup>	benefit of a levy	benefit of discussion*
<i>herederos forzosos</i> <sup>101</sup>	forced heirs*	forced heirs*

\*terms presumably adopted from Louisiana Civil Code articles

### *C. Joannini's Argentine Civil Code Translation (1917): More Civilian Yet?*

If anything, Joannini's 1917 translation of the Argentine Civil Code was more "civilian" in feeling than his Colombian Civil Code translation. First, he continued to prefer distinctive Louisiana civil law terms such as *acquets and gains*,<sup>102</sup> *disinherison*,<sup>103</sup> *solidary obligations*,<sup>104</sup> and *benefit of discussion*.<sup>105</sup> The fact that standard editions of the Argentine Code include the drafter Dalmacio Vélez Sarsfield's notes, with their occasional references to the 1825 Louisiana Civil Code, may have influenced Joannini in this respect.<sup>106</sup>

97. Span. Civ. C. Bk. IV, tit. II; Col. Civ. C. Bk. IV, tit. II.

98. Span. Civ. C. Bk. IV, tit. VI, art. 1560; Arg. Civ. C. Bk. III, tit. III.

99. Span. Civ. C. Bk. IV, tit. IX; Col. Civ. C. Bk. IV, tit. XXVIII.

100. Span. Civ. C. Bk. IV, tit. XIV, arts. 1834-1837; Col. Civ. C. Bk. IV, tit. XXXV, arts. 2383-2384.

101. Span. Civ. C. Bk. III, tit. III, art. 807; Col. Civ. C. Bk. III, tit. V (for forced heirs). Also known (in the Philippines) as compulsory heirs.

102. See Arg. Civ. C. Bk. II, § III, tit. II, art. 1271 (*gananciales* = acquets and gains). (Joannini relied on the 1906 LaJouane edition for his translation, which had erroneously re-numbered articles to take into account new legislation and placed the code's original article numbers in [brackets]. Only the earlier (correct) numeration is used here).

103. See Arg. Civ. C. Bk. IV, § I, tit. XVI (*desheredación* = disinherison).

104. See Arg. Civ. C. Bk. II, § I, tit. XIV (*obligaciones solidarias* = solidary obligations).

105. See Arg. Civ. C. Bk. II, § III, tit. X, art. 2019 (*beneficio de escusión* = benefit of discussion).

106. See Tucker, *supra* note 54, at 295: the Civil Code of 1870 was itself a revision of the Civil Code of 1825, which was promulgated in French, translated into English. See also Tucker, *supra* note 54, at 290-92, it later had its own im-

Second, Joannini clarified certain civil law terms that he had used inconsistently in his Canal Zone translation: he abandoned ‘fraud’ for *dolo* in favor of the Latin *dolus*, then placed *fraude* in parentheses to suggest a possible distinction between English fraud and the Argentine civil law concept (i.e., ‘fraud (*fraude*)’).<sup>107</sup> Third, he purged various common law terms which had survived in his earlier project, including *liens*, *consideration*, *betterments*, *breach* (of contract), and *wear and tear*.

Even where Joannini preserved common law categorical distinctions, he was careful to clarify civilian usage. In the matter of successions, Joannini (rather unusually) distinguished between common law realty and personalty when he rendered *cosas legadas* as ‘things *bequeathed*’ (when movable) and ‘things *devised*’ (when immovable).<sup>108</sup> Nevertheless, Joannini provided a footnote explaining that in the Spanish-language original the one term *legar* encompasses both concepts, and that the distinction in legal English is not present in Spanish civil law.<sup>109</sup> Elsewhere, he re-purposed *devise* and *bequeath* to instead distinguish between civil law concepts; in Book III, he used the former to refer to a transfer of naked or full ownership and the latter to refer to a transfer of rights merely of enjoyment of a thing or usufruct.<sup>110</sup>

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portant, indirect influence on Vélez Sarsfield’s Argentine Civil Code via Florencio García Goyena’s *Concordancias* of 1852. See Agustín Parise, *The Place of the Louisiana Civil Code in the Hispanic Civil Codifications: The Comments to the Spanish Civil Code Project of 1851*, 68 LA. L. REV. 823, 848-52 (2008) [hereinafter Parise, *Hispanic Codifications*]; see also Olivier Moréteau & Agustín Parise, *Recodification in Louisiana and Latin America*, 83 TUL. L. REV. 1103, 1116 (2009).

107. See, e.g., Arg. Civ. C. Bk. II, § II, tit. I, ch. 2 (*dolo* = *dolus*); Bk. II, § II, tit. I, art. 954 (*fraude* = fraud).

108. See Arg. Civ. C. Bk. IV, § I, tit. XVII (*cosas legadas* = things bequeathed, things devised).

109. Arg. Civ. C. at 570 & n.20 (“This term [*legado*] includes both bequests and devises. *Legatario*, which has been translated *legatee*, includes both legatees and devisees. *Devisee* has, however, been used when a devise only and not also a bequest is involved. The verb *legar* has been translated by the words *bequeath* and *devise*, according to the class of property referred to.”).

110. See, e.g., Arg. Civ. C. Bk. III, tit. X, arts. 2815-2816 (using ‘devise’ for *legado* in context of naked ownership, ‘bequeath’ for *legado* in context of usufruct).

In addition to purifying the civilian vocabulary in this second translation, Joannini also supplemented the text with numerous footnotes that offered a comparative perspective on civilian terminology. Thus, on the first use of *servitude*, Joannini explained that “[t]his term is used in lieu of the common law term *easement* not only because the latter is not the exact equivalent of *servitude*, but in order to be consistent in the use of civil law terms throughout this translation.”<sup>111</sup> Similarly, on the first use of *compensation*, Joannini clarified that, “[c]ompensation resembles in many respects the common law set-off. The principal difference is that a set-off must be pled to be effectual; whereas compensation is effectual, without any such plea.”<sup>112</sup> Even where Joannini concluded that the civil law and common law terms represented more or less identical concepts, he was careful to note the difference in terminology and persisted in using the civil law term instead of a more-accessible common law alternative. For example, in discussing *transaction*, Joannini conceded that “[t]his term is the equivalent of the common-law compromise” yet reaffirmed his decision to use the civilian rather than legal English term, explaining that, “[a]s stated in the introductory note, civil law terms have been strictly adhered to in this translation.”<sup>113</sup> Joannini then noted that ‘compromise’ means something “very different” in the civil law, and defined that term as well, rather than abandon the use of two civil law terms by substituting the more-familiar ‘compromise’ and ‘settlement’.<sup>114</sup> Similar footnotes clarified civil law concepts such as *cause*,<sup>115</sup> *charges*,<sup>116</sup> *cautions*,<sup>117</sup> and so on, usually with citations to *Bouvier’s Law Dictionary* or Howe’s *Studies in the Civil Law*.<sup>118</sup>

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111. *See id.* at 7 & n.2.

112. *See id.* at 118 & n.11.

113. *Id.* at 118 & n.12.

114. *Id.* at 118 & n.12.

115. *Id.* at 87 & n.1.

116. *Id.* at 96 & n.7.

117. *Id.* at 250 & n.42.

118. *See, e.g., id.* at 87 & n.1, 97 & n.8.

In a “Translator’s Note,” Joannini was explicit about his objectives as a translator, which had not changed significantly from his Colombian Civil Code translation a decade earlier:

In the following translation . . . the translator has used civil law terms exclusively. Any attempt to employ common law terms would have led to confusion and obscurity, but the index has been so prepared to afford the common law lawyer enlightening facil’ty [sic] in consulting the work, and a number of footnotes have been inserted throughout giving authorized definitions of words not defined in the text itself.<sup>119</sup>

Joannini’s preference for banishing common law English terms such as *bailments*, *chattels*, and *replevin* to his index (itself over 100 pages), and explaining differences in legal concepts in footnotes, may be considered a significant departure from Walton’s method.<sup>120</sup> For Walton, the comparative work of the translator occurs within the text; for Joannini, comparison appropriately belongs outside the text or in the postliminary materials. It is an approach that is often followed today, but which was by no means universal at the time.

#### *D. Wheless’s Brazilian Civil Code Translation (1920): A Modified Civilian Approach*

The Comparative Law Bureau’s final translation prior to its demise was Wheless’s Brazilian Civil Code of 1920. In large part, Wheless followed Joannini’s method, although not nearly to the same extent. The former’s approach is best described as an attempt to give the translation a civilian feel, while suggesting possible avenues of comparison for the English-speaking lawyer with no knowledge of Portuguese or limited background in the civil law. Thus, Wheless, unlike Joannini, avoided many unusual civilian terms that would not be familiar to common law practitioners: he prefers ‘recover’ for *reivindicar*,<sup>121</sup> ‘guardian’ for *tutor*,<sup>122</sup> and

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119. *Id.* at xix.

120. *See, e.g., id.* at 638, 642, 709 (index terms).

121. Braz. Civ. C. Bk. I, tit. 2, art. 248 (*reivindicar* = recover).

122. Braz. Civ. C. Bk. I, tit. 7, ch. 1 (*tutela* = guardian).

‘merger’ for *confusão*.<sup>123</sup> Distinctive Louisiana legal English terms, for the most part, have been omitted: there are no *acquets and gains* or *disinherison*,<sup>124</sup> although *obrigações solidarias* has been rendered *solidary obligations*.<sup>125</sup> On the other hand, Wheless regularly employed civil law English terms for Brazilian property and contract law concepts: he uses *servitudes* for *servidões*, *movables* and *immovables* for *bens moveis* and *immoveis*, *redhibitory vices* for *vícios redhibitorios*, *dation in payment* for *dação em pagamento*.<sup>126</sup> Elsewhere, Wheless rendered Portuguese-language civil law concepts into jurisdiction-neutral civilian English but placed an analogous common law English term in parentheses for clarification. Thus: ‘compensation (set-off)’ for *compensação*, ‘mandate (powers of attorney)’ for *mandato*, ‘deposit (bailment)’ for *deposito*.<sup>127</sup> In many cases, Wheless simply left the original Portuguese-language civil law term in parentheses. The result is a translation that presents basic civilian concepts in civilian legal English where possible yet does not rely on jurisdiction-specific civil law terms from Louisiana’s Civil Code.

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123. See, e.g., Braz. Civ. C. Bk. III, tit. 3, art. 804 (*confusão* = merger).

124. Cf. Braz. Civ. C. Bk. IV, tit. 3, ch. 15 (*desherdção* = disinheritance).

125. See, e.g., Braz. Civ. C. Bk. III, tit. 1, ch. 6 (*obrigações solidarias* = solidary obligations).

126. See, e.g., Braz. Civ. C. Bk. II, tit. 3, art. 674 (*servidões* = servitudes), Bk. II (parte geral), tit. 1, ch.1 (*bens immoveis*, *bens moveis* = immovables, movables); Bk. III, tit. 4, ch. 5 (*vícios redhibitorios* = redhibitory vices); Bk. III, tit. 2, ch. 6 (*dação em pagamento* = dation in payment). This last term is near to Louisiana’s ‘giving in payment’ or ‘dation in paiement’. Cf. La. Civ. C. arts. 2655-2659 (1870) (giving in payment); see also Taylor v. Taylor, 24 So. 2d 74, 75 (La. 1945) (likening Louisiana law’s giving in payment to common-law ‘accord and satisfaction’).

127. See, e.g., Braz. Civ. C. Bk. III, tit. 2, ch. 7 (*compensação* = compensation (set-off)); Bk. III, tit. 5, ch. 7 (*mandato* = mandate (powers of attorney)), Bk. III, tit. 5, ch. 6 (*deposito* = deposit (bailment)).

III. CRITICAL RESPONSES TO JOANNINI AND WHELESS: BOOK  
REVIEWS FROM LEGAL SCHOLARS

Initially, civil law scholars took negligible interest in the War Department translations. There was little comment, for example, on Walton's Spanish Civil Code translation or its methods, with one notable exception.<sup>128</sup> Even less was said of Joannini's Colombian Civil Code translation when it appeared a few years later, although the work was briefly mentioned by both the *Harvard Law Review* and *Green Bag*.<sup>129</sup> Only Phanor Eder appears to have expressed an appreciation of the utility of a Spanish-English code translation that preferred civil law terms to legal English. In the preface to his 1910 translation of Colombia's mining laws, Eder stated cryptically that:

[He was] somewhat indebted to the translations of the Civil Code [of Colombia] . . . by Frank L. Joannini . . . for the occasional rendering of a knotty word or phrase whose near equivalent (exactness is so often impossible so widely do the English and the Spanish systems of law differ) involved much groping . . . .<sup>130</sup>

When the Bureau turned to publishing its own civil code translations, however, interest from legal scholars was much greater. Reviews in leading law journals alternated between effusive praise and strong criticism of Joannini's and Wheless's use of civilian terminology. At first, the reviews were largely positive, particularly for Joannini's Argentine Civil Code translation. For example, in an

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128. The one exception was Joseph Henry Beale, Jr., whose otherwise positive review in the *Harvard Law Review* complained that Walton's translation was "not always commendable; hispanisms remain to obscure the sense, and *per contra* certain terms of our own law are misapplied to unlike Spanish ideas." Joseph Henry Beale, Jr., *The Civil Law in Spain and Spanish America*, 14 HARV. L. REV. 160 (1900) (book review).

129. *The Civil Code of the Republic of Panama*, 19 HARV. L. REV. 76 (1905) (book review); *The Civil Code of the Republic of Panama and Amendatory Laws*, 17 GREEN BAG 556, 556 (1905) (book review) (stating that the translation is "said to be the first civil code of a Latin-American country to be translated into English."). In fact, Joannini missed this distinction by at least a year. Cf. THE CIVIL CODE OF THE MEXICAN FEDERAL DISTRICT AND TERRITORIES (J.P. Taylor trans., American Book & Printing Co. 1904).

130. PHANOR JAMES EDER, THE MINING LAWS OF THE REPUBLIC OF COLOMBIA 3 (Press of B.S. Adams 1912).

April, 1917 review in the *ABA Journal*, New York attorney and politician F.D. Pavey praised Joannini for exhibiting the necessary sensitivity to civil law-common law distinctions in vocabulary:

One of the distinguishing features of the work is the manner in which the use of the civil law terms and common law terms has been co-ordinated. The translator, with excellent judgment, has used literal translations of civil law terms in the text of the translation. The corresponding ideas in Anglo-Saxon jurisprudence are usually expressed by terms of the common law which were either taken from other sources or were so altered in the course of their transit through the early stages of Anglo-Saxon jurisprudence that they bear no resemblance to the civil law terms.<sup>131</sup>

Likewise, in the same issue, former law librarian of Congress and Yale law professor Edwin Borchard stated that:

No one who has had experience in rendering into English the legal concepts embraced in the system of a civil law country can fail to appreciate the difficulty of the translator's task, nor be unduly captious in the criticism of terminology. The work under review incorporates civil law terms in literal translation, such as 'prestacion,' 'mandatory,' [sic] 'rehibitory vices,' [sic] 'tutorship,' 'benefit of inventory,' 'fisc,' 'usufruct,' 'paternal power,' 'revendication,' 'transaction,' and numerous others. Sometimes the expression is explained in a footnote, at other times the Anglo-American lawyer will be compelled to bring to the subject some prior orientation. This method, however, whatever its weakness, is preferable to any attempt at a free translation, with its efforts, inevitably misleading and inaccurate, to employ a complete common-law terminology.<sup>132</sup>

In early 1918, however, negative reviews began to appear. Several comparatists criticized Joannini's civilian vocabulary, arguing that the translation method was a weakness, not a strength. Layton Register, who had studied law in Madrid and wrote several articles on French law from a comparative perspective, was the first to raise

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131. Frank D. Pavey, *The Argentine Civil Code*, 3 A.B.A. J. 702, 704 (1917) (book review).

132. Edwin M. Borchard, *The Argentine Civil Code*, 3 A.B.A. J. 707, 707 (1917) (book review).

an objection. Register wrote in the *University of Pennsylvania Law Review* that Joannini's avoidance of legal English's technical terms was unnecessary, even counterproductive:

He [the translator] decided to avoid a search for English equivalents and to take over bodily the terminology of modern Roman law. Against this method of itself we make no criticism beyond the inartistic invention of taking over of such words as 'mandate,' 'benefit of inventory,' 'prestation,' 'discussion,' 'dative,' 'dolous,' 'resolatory conditions,' 'solidary obligations,' 'onerous contract of life annuity,' (there is almost humor in this), 'disinherison,' 'caution juratory,' and many other terms that might be enumerated . . . . Moreover we do not at all admit that it is necessary to invent a terminology for words of Roman origin used to describe legal institutions having a broad equivalent in the common law system. Any work on general jurisprudence would have enlightened the translator on the universalities of such categories as 'agency,' 'bailment,' 'wrong,' 'lien,' 'defect.' There [sic] need not be rendered by 'mandate,' 'commodatum,' 'offense,' 'privilege,' 'vice' . . . .<sup>133</sup>

Two months later, Joseph Drake, who taught both Roman and Spanish civil law at Michigan, came to the translation's defense. In what was a generally positive assessment in the *Michigan Law Review*, Drake stated that "[t]he translator, who has already proved his capacity in several translations for the Bureau of Insular Affairs, has wisely transliterated civil law terms instead of attempting to find common translations for them . . . ." <sup>134</sup> The reviewer also praised Joannini for placing every-day common law terms in a copious index "for those unacquainted with civil law phraseology."<sup>135</sup>

A final review, however, was the most negative by far: the author criticized Joannini's use of *exceptions* and *civil fruits* instead of allegedly "equivalent terms" from the common law such as *defenses*

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133. Register, *supra* note 8, at 182.

134. Joseph H. Drake, *The Argentine Civil Code*, 16 MICH. L. REV. 460, 469 (1918) (book review).

135. *Id.*



and *income* and questioned the choice of *compensation* for *compensación* (rather than *set-off*) and *transaction* for *transacción*.<sup>136</sup> Of the last two examples, the reviewer stated that there was “no excuse” for “literal translations which result in evident confusion with English words, colloquial or technical, of different meaning.”<sup>137</sup>

Reviews of Wheless’s Brazilian Civil Code translation a few years later were even more negative. Ernest Lorenzen, whose research and teaching straddled both comparative law and conflicts of law, panned Wheless not for the quality of his translation, which he acknowledged “to be fairly accurate,” but rather for his adherence to civilian terminology.<sup>138</sup> In echoes of Register from a few years before, Lorenzen wrote in the *Yale Law Journal* that:

A good translation requires furthermore that the original text should be reduced into idiomatic English. In the case of a legal work this means that so far as possible the translation should be expressed in the legal terminology familiar to English and American lawyers. In this respect the translation is subject to criticism. In large number of instances where it would have been perfectly easy to give the English [i.e., common law] equivalent the Portuguese words have been simply anglicized.<sup>139</sup>

In particular, Lorenzen criticized Wheless’s use of *tradition* instead of ‘delivery’ (for *tradição*), *dation in payment* instead of ‘giving in payment’ (for *dação em pagamento*), *transaction* instead of ‘compromise’ (for *transação*), and *compromise* instead of ‘arbitration’ (for *compromisso*), etc.<sup>140</sup>

The most revealing of all the reviews, however, must be Max Radin’s critique of Wheless’s translation in the *California Law Review*. According to Radin,

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136. F.S. Philbrick, *The Argentine Civil Code Together with the Constitution and Law of Civil Registry*, 13 ILL. L. REV. 64, 67-69 (1918) (book review).

137. *Id.* at 69.

138. Lorenzen, *supra* note 8, at 652.

139. *Id.* at 652-53.

140. *Id.* at 653.

In all translation it is difficult to keep one's linguistic balance, and the most careful writer finds himself lured into literal renderings that are quite unidiomatic in English. In law the difficulty is increased by the fact that we have to translate a fixed and technical terminology of one system of law into the fixed and technical terminology of a wholly different one. Most of the terms, even when superficially alike, have wholly different implications.<sup>141</sup>

In other words, Radin recognized the difference between the two legal systems in question but cautioned against transliterations that led to confusion with legal English. From Radin's point of view, the job of the translator was principally to overcome the inconveniences of difference by rendering civil law concepts into the common law's "fixed and technical terminology." If there were too much risk of confusion, Radin argued for leaving such terms in the original language, which he criticized Wheelless for doing too sparingly.<sup>142</sup>

#### IV. COMPETING COMPARATIST PARADIGMS OF CIVIL LAW-COMMON LAW DIFFERENCE

Criticism of Joannini's approach to legal translation might suggest, at first, a lack of sophistication about civilian terminology on the part of the more-negative reviewers, or at least minimal awareness that use of legal English for distinct civil law concepts could obscure the nuances of civil law-common law difference. Yet such conclusions must be rejected, for Register, Lorenzen, and Radin were all scholars of civilian systems, and their writings reveal that they were well-acquainted with some of the critical differences between the two traditions.<sup>143</sup> Instead, their indifference to preserving

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141. Radin, *supra* note 8, at 444.

142. *Id.* at 443.

143. Register studied modern civil law in Paris and Madrid before the First World War and wrote mostly about comparative and international law topics. *See, e.g.*, Layton B. Register, *A Morning at the Paris Law School*, 61 U. PA. L. REV. 33 (1912); Layton B. Register, *The Dual System of Civil and Commercial Law*, 61 U. PA. L. REV. 240 (1913). He also contributed to several legal translation projects himself. *See, e.g.*, SCIENCE OF LEGAL METHOD: SELECT ESSAYS BY VARIOUS AUTHORS (Ernest Bruner & Layton B. Register trans., Boston Book Co. 1917).

a separate civilian vocabulary in English (in the case of Register and Lorenzen) was an informed one and more likely reflects assumptions about the nature of civil law-common law difference that were widely-held among early 20th century American legal scholars. Such assumptions in turn affected attitudes to perceived differences in legal terminology as well as legal translation.

Of these assumptions, the most important was the widespread belief (reaching then perhaps the height of its influence) that the civil and common law traditions were more alike than previously thought and that remaining differences were historically contingent or declining in importance.<sup>144</sup> The popular form of this theory likely had its origins with Henry Sumner Maine's "Roman Law and Legal Education," first published in the 1856 *Cambridge Essays* and included in later editions of *Village-communities in the East and West* (1871), in which the English legal historian argued that the world's two great legal systems, English law and Roman law, were becoming more alike as English law followed a similar trajectory of historical development.<sup>145</sup> Moreover, the British Empire's rapid commercial and

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Lorenzen is better known for his work on conflicts of law, but he also wrote several articles on Roman, civil, and comparative law and was an occasional contributor to both American and French comparative law journals. See, e.g., Ernest Gustav Lorenzen, *Causa and Consideration in the Law of Contracts*, 28 YALE L.J. 621 (1919) (comparing civil law and common law doctrines); Ernest Gustav Lorenzen, *The German 1908 Law of Checks*, 2 ANN. BULL. 29 (1909); see also Arthur L. Corbin, *Ernest Gustav Lorenzen*, 60 YALE L.J. 579, 580 (1951) (describing Lorenzen's academic background and interest in Roman and European comparative law). Lorenzen's preoccupation with private international law, however, undoubtedly colored his attitudes to the potential purposes of legal comparison. By contrast, Radin was destined for a career as a Roman and civil law scholar. See, e.g., MAX RADIN, *HANDBOOK OF ROMAN LAW* (West Publ'g Co. 1927); Max Radin, *Fundamental Concepts of Roman Law*, 13 CAL. L. REV. 207 (1925).

144. See, e.g., HOWE, *supra* note 13 (lecture I) (arguing that Roman and English law were more similar than typically imagined and proposing numerous examples). Howe believed that historical development, rather than cultural conditions, explained most differences between national legal systems, and he thought classical and modern civil law very similar. About Roman and American admiralty practice, Howe claimed (without any sense of hyperbole) that "[i]f the gracious shade of Ulpian could appear in a district court of the United States in an admiralty case, he would require but a brief preparation either in principle or practice." HOWE, *supra* note 56, at 48.

145. See Henry Sumner Maine, *Roman Law and Legal Education*, in *CAMBRIDGE ESSAYS* 1, 2 (1856):

colonial expansion brought English lawyers into renewed contact with civilian systems and encouraged English lawyers to think of English and Roman law as the twin foundations of world law. By 1901, James Bryce was predicting that, though neither system was likely “to overpower or absorb the other” in geopolitical terms, it was nevertheless possible that “they may draw nearer, and that out of them there may be developed, in the course of ages, a system of rules of private law which shall be practically identical as regards contracts and property and civil wrongs . . . .”<sup>146</sup> A generation later, Radin himself stated that, “[t]he most obvious movement in law at the present time is the gradual assimilation which is taking place between the modified Roman law of most modern countries and the only system that can pretend to rival it, the common law of England, the United States, Canada and Australia.”<sup>147</sup>

The idea that English law and Roman law were growing more alike was initially rooted in abstract (and often erroneous) theories of the common law’s historical development, but political events during the period tended to lend credibility to such explanations. Among these was the steady development of mixed legal systems,

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It is not because our own jurisprudence and that of Rome were *once* alike that they ought to be studied together – it is because they *will* be alike. It is because all laws, however dissimilar in their infancy, tend to resemble each other in their maturity; and because we in England are slowly, and perhaps unconsciously or unwillingly, but still steadily and certainly accustoming ourselves to the same modes of legal thought and to the same conceptions of legal principle to which the Roman jurists had attained after centuries of accumulated experience and unwearied cultivation (emphasis in original).

*See also* HENRY SUMNER MAINE, VILLAGE-COMMUNITIES IN THE EAST AND WEST 332-33 (3d ed., H. Holt 1880). *But see* Michele Graziadei, *Changing Images of the Law in XIX Century English Legal Thought*, in THE RECEPTION OF CONTINENTAL IDEAS IN THE COMMON LAW WORLD 1820-1920 (Mathias Reimann ed., Duncker & Humblot 1993) (examining 19th century trends in English legal history and their effects on perceptions of similarity/difference with continental legal systems and stating that assumptions of a close (historical) relationship between Roman and English law were already in decline by last quarter of 19th century).

146. JAMES BRYCE, STUDIES IN HISTORY AND JURISPRUDENCE 122-23 (Oxford U. Press 1901).

147. RADIN, *supra* note 143, at 101.

both in the British Empire as a result of 18th and 19th century imperial growth (for example, in Lower Canada and the Cape Colony), as well as in the United States' new insular territories (such as Puerto Rico, the Philippines, and, briefly, Panama). The creation of these systems, which generally combined English (or American) public law and some form of modern civil law, suggested the interchangeability or compatibility of civil and common law systems, or at least the declining significance of civil law-common law distinctions. At the very most, bijural mixing promised new opportunities for judges to select the best rules from each tradition to create a third, superior, system, a project not unrelated to the original goals of European comparative law.<sup>148</sup> In this spirit, R.W. Lee, a Roman-Dutch scholar with practical and academic experience in the legal systems of Quebec and Ceylon, pronounced in 1915 that "we are at the end of the time in which it is still possible to contemplate the Civil Law and the Common Law as separate and self-contained entities . . . . They are becoming assimilated."<sup>149</sup> The French comparatist Henri Lévy-Ullmann came to a similar conclusion in an article reviewing the development of another mixed jurisdiction, Scotland. Lévy-Ullmann happily predicted that the future "law of the civilised nations" would be, like Scots law, a "combination between the Anglo-Saxon system and the continental system."<sup>150</sup>

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148. Cf. Vernon Valentine Palmer, *The Cultural Voices of Judges and Jurist: Purists, Pragmatists, and Pollutionists*, in MIXED JURISDICTIONS WORLDWIDE, *supra* note 11, at 41 (associating this view of the mixed jurisdictions as "laboratories of comparative law" with "pragmatists").

149. R.W. Lee, *Civil Law and Common Law: A World Survey*, 14 MICH. L. REV. 89, 100 (1915) ("The law of the future, like the first man fashioned by Prometheus, will consist of particles gathered from every side, will be as composite as an English plum pudding."). Others were more skeptical about Roman-Dutch law's capacity for survival against the onslaught of English common law's global expansion. See, e.g., F.W. MAITLAND, ENGLISH LAW AND THE RENAISSANCE 31 (Cambridge U. Press 1901) (Rede lecture) (stating that "the so-called 'Roman Dutch' law of certain outlying parts of the British Empire now stands alone, and few, I imagine, would foretell for it a brilliant future . . .").

150. Henri Lévy-Ullmann, *Law of Scotland*, 37 JURID. REV. 370, 390 (1925).

American comparatists soon put such theories to use in their own Pan-American context. In the *Virginia Law Review*'s very first article, Hannis Taylor, following Bryce, argued that it was "hard to overestimate the importance of the fusion now going on between Roman private and English public law in the state systems of Latin America," a reference to the mix of private law and republican forms of government in the independent republics of South America.<sup>151</sup> Extrapolating from Latin American examples to a more global perspective, Taylor asked his readers rhetorically, "[W]ho is willing to deny that out of this fusion of Roman private and English public law there is arising throughout the world a new and composite state system, whose outer shell is English constitutional law, including jury trials in criminal cases, and whose interior code is Roman private law?"<sup>152</sup> For those in doubt, Taylor argued that Louisiana showed what could be accomplished. As early as 1899, he told the state's bar that their mixed jurisprudence was an "epitome of all that is best in the past, and as an index finger that points to the ultimate form which the state system of the Western Hemisphere may possibly assume."<sup>153</sup>

For Bureau founder William Smithers, the two opportunities for legal mixing presented by the new insular possessions and the Pan-American movement were directly-related. In 1909, Smithers gleefully announced that the mixing of Spanish civil and Anglo-American common law in the United States was leading to the "inauguration of a distinct system to be known as American law" which would "draw perfection from every juridical, philosophical, ethical and political source . . ." available, irrespective of national origin.<sup>154</sup> Two years later, he touted the benefits of better knowledge of Hispanic

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151. Hannis Taylor, *The Jurisprudence of Latin America*, 1 VA. L. REV. 1, 13 (1913).

152. *Id.*

153. Hannis Taylor, *A Comparative Study of Roman and English Law, in the Old World and the New*, 7 AM. LAW. 473, 476 (1899).

154. William W. Smithers, *Comparative Law as a Practical Science* 5 (1909) (paper given at Pennsylvania Bar Association meeting).

legal systems so that the Hispanic world's civil law systems might "be amalgamated with the Common Law and later American legislation."<sup>155</sup> Perceptions that the uniform state law movement held out an important opportunity for commercial integration during a period of national economic expansion likewise reinforced assumptions that comparison's primary utility was to mitigate the myriad (usually commercial) inconveniences of legal diversity. It is significant that several comparatists considered here, including Smithers and Walton, were supporters of the uniform state law movement and that Lobingier twice proposed extending the movement's successes to the Philippines.<sup>156</sup> In addition, Register's writings appear to suggest that his own interest in comparison centered on the promise of harmonizing systems, while Lorenzen's interests in private international law reflect a similar hermeneutic.<sup>157</sup>

From far parts of the globe, American colonial judges also joined voices such as Taylor's and Smithers' by insisting that legal blending was not only feasible but that legal difference could be overcome with facility. In particular, several American territorial judges in the Philippines argued that they were witnessing legal convergence between the civil law and the common law in their own courtrooms and boasted that the process was proceeding without incident. For example, Charles Lobingier, a trial judge sitting on the Court of First Instance in Manila, wrote in 1911 that the task of

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155. William W. Smithers, *Latin America*, 3 ANN. BULL. 14, 15 (1911) (explicitly linking comparison and Pan-Americanism).

156. See William W. Smithers, *Editorial Miscellany*, 3 ANN. BULL. 10 (1910) ("The educative force of the many years devoted to uniform legislation has not only secured national recognition for that work, but aroused a sense of appreciation, both lay and professional, to the advantages of comparative law study generally."); Charles S. Lobingier, *Civil Law Rights through Common Law Remedies*, 20 JURID. REV. 97 (1908) (recommending the extension of uniform state law movement to Philippines); Charles S. Lobingier, *Codification in the Philippines*, 3 ANN. BULL. 42 (1910) (similar) [hereinafter Lobingier, *Codification*].

157. In general, Register never liked a civil law system better than when it was in the process of adopting common-law methods. See, e.g., Layton B. Register, *Judicial Powers of Interpretation under Foreign Codes*, 65 U. PA. L. REV. 39, 39, 50 (1916) (expressing cautious optimism that Swiss Civil Code of 1912's preliminary title had opened door to greater use of case law as supplementary legal authority).

American courts in that colony had been to “adjust, harmonize and blend the two distinct systems.”<sup>158</sup> Clearly satisfied with the progress made over the previous decade, Lobingier told fellow Bureau members that “the experiment has demonstrated the feasibility of blending segments of the Civil and the Common (Anglo-American) law, the two systems which divide the civilized world, thus confirming the view that at root the two are really one.”<sup>159</sup>

Assumptions that civil law-common law difference was illusory or declining in importance soon had a predictable impact on attitudes to civilian terminology. English-speaking civil law scholars, in their efforts to explain allegedly superficial distinctions between the two systems, frequently promoted the idea that such distinctions were principally limited to differences in procedure and vocabulary, rather than substance. For example, in his widely-read *Studies in the Civil Law*, Howe had argued that the “difference between the civil law and the common law is by no means so great as some persons imagine . . . . There are differences of *terminology*, which, to some, seem strange and alien, but when they are once understood, the leading doctrines are found to be much the same.”<sup>160</sup> In fact, Howe told his readers, the common law’s “technical terms” largely covered the same “topics” of the civil law.<sup>161</sup> In the opinion of Sir Frederick Pollock, “[t]he more we look into other civilized [i.e., non-English] modern laws, the more we shall find that under all differences of terminology and procedure the results come out not much unlike.”<sup>162</sup>

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158. Lobingier, *Juridical Fusion*, *supra* note 13, at 38-39. See also the comments of American colonial judge George Malcolm a few years later, which are very similar. *Philippine Law*, 11 ILL. L. REV. 331, 332 (1917) (“The two great streams of the law, the civil, the legacy of Rome to Spain coming from the west, and the common, the inheritance of the United States from Great Britain coming from the east, have here in the Philippines, met and blended.”).

159. Lobingier, *Codification*, *supra* note 156, at 41-42 (citing BRYCE, *supra* note 146, at 122-23).

160. HOWE, *supra* note 13, at 149 (emphasis supplied).

161. *Id.* at 8.

162. Frederick Pollock, *Genius of the Common Law*, 12 COLUM. L. REV. 660, 661 (1912).



It is interesting to note that Pollock's comment was followed with the claim that, "[n]o sane and impartial man will believe that in the main there is not as good justice in Edinburgh as in London, or at Montreal as at Toronto," a clear reference to two mixed systems (Scotland and Quebec).<sup>163</sup> Indeed, it was evidence from the mixed systems that convinced many that vocabularies were the last to merge in the process of legal convergence. Thus, Lee, predicting that the civil law and common law were blending on a global scale, claimed that the two traditions' "assimilation will, before very long, be complete, the difference, if any remains, being a difference rather of terminology than of substance," a conclusion similar to Pollock's.<sup>164</sup> Likewise, in an article reviewing the common law's rapid global spread, Roscoe Pound (yet another early Bureau member) described the outlier Louisiana as a "common-law system in all but its terminology" and stated elsewhere that "[e]xcept as it lingers in their legal vocabulary, the Scotch have almost abandoned Roman law in all their courts."<sup>165</sup> In *The Spirit of the Common Law*, Pound cast significant doubt on the civil law's very survival in the mixed systems, apart from their unique legal lexicons, when he stated that "[i]n the Philippines and in Porto Rico there are many signs that common-law administration of a Roman code will result in a system Anglo-American in substance if Roman-Spanish in its terms."<sup>166</sup> Comments such as these suggest a prevalent suspicion that civilian vocabularies were holdovers of a past era of legal diversity. Moreover, the emphasis on terminology as the principal locus of difference or the fading indicia of a divided past was clearly a consistent theme for many English-speaking scholars of the period and one that reflected their specific historical and political circumstances.

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163. *Id.* at 661-62.

164. Lee, *supra* note 149, at 100.

165. Roscoe Pound, *The Spirit of the Common Law*, 18 GREEN BAG 17, 17-18 (1906) (citations omitted).

166. ROSCOE POUND, *THE SPIRIT OF THE COMMON LAW* 2 (Marshall Jones Co. 1921).

By contrast, it was among those comparatists who emphasized civil law-common law difference in their scholarship (law professors such as Borchard and Sherman) or who expressed skepticism about the speed of the hypothesized global legal convergence (such as the colonial judge Peter Hamilton) that criticism of Walton's translation, and praise of Joannini's and Wheless's, was most reliably encountered.<sup>167</sup>

## V. CONCLUSIONS

Scholars of comparative law have frequently noted the important role that intellectual history and global politics have played in the discipline's development, both in terms of its scholarly ambitions and its fundamental assumptions.<sup>168</sup> The history of English-speaking comparison in particular is replete with examples (some dating to the early modern period) of the impact of contemporary trends in politics and ideology on English and American attitudes to the civil law tradition.<sup>169</sup> Indeed, shifting priorities in domestic politics and

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167. See, e.g., Peter J. Hamilton, *The Civil Law and the Common Law*, 36 HARV. L. REV. 180, 190 & n.25 (1922) (expressing more-skeptical stance to rapid civil law-common law convergence, criticizing Walton's translation of *causa* as consideration); Charles P. Sherman, *Salient Features of the Argentine Law of Sale*, 14 ILL. L. REV. 617, 618 & n.9 (1920) (praising Joannini's translation as a "splendid work"); Charles P. Sherman, *Salient Features of the Brazilian Law of Sale*, 42 CAN. L. TIMES 648, 650 & n. 4 (1922) (praising Wheless's translation as a "most excellent and scholarly work"); see also Edwin M. Borchard, *Some Lessons from the Civil Law*, 64 U. PA. L. REV. 570, 581 (1916) (emphasizing substantive differences between civil law and common law systems, in particular use of *stare decisis*).

168. See, e.g., Gerhard Danneman, *Comparative Law: Study of Similarities or Differences?*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 386-89 (Mathias Reimann & Reinhard Zimmermann eds., Oxford U. Press 2006) (discussing 20th-century comparative law's emphasis on legal convergence); see also Maria Pargendler, *The Rise and Decline of Legal Families*, 60 AM. J. COMP. L. 1043, 1062-73 (2012) (describing 19th-century globalization's effects on comparative thought and stating that "[i]n the rapidly globalizing world of the nineteenth-century, early comparatists seemed less concerned with measuring differences across legal systems than with paving the way for legal convergence. The purpose of most comparative works was to search for common ground amidst apparent diversity.").

169. See BRIAN P. LEVACK, *THE CIVIL LAWYERS IN ENGLAND, 1603-1641: A POLITICAL STUDY* (Clarendon Press 1973), ch. 3-5 (examining the relationship

intellectual history have often shaped common law views of the civil law tradition in either positive (when viewed as a scientific or universal system) or negative directions (when viewed as fundamentally foreign).<sup>170</sup> As the degree of difference between the two systems has taken on important implications for European legal integration, what had once been a particular preoccupation of English-speaking legal scholars has become an important concern and point of debate among European comparatists as well.<sup>171</sup>

The turn of the last century was one such moment in the cyclical history of changing common law attitudes to the civil law tradition, particularly in American comparative thought. Both Pan-Americanism's emphasis on uniform commercial legislation and legal mixing in the new insular possessions created heightened expectations of legal convergence across the civil law-common law frontier, though

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between political ideology and Puritan/Royalist attitudes to English civil law tradition during period leading up to Civil War); Luigi Moccia, *English Attitudes to the Civil Law*, 2 J. LEG. HIST. 157, 159-60, 164 (1981) (arguing that "traditional, 'antagonistic' attitude of common lawyers towards 'civil law' . . . finds an explanation in [17th century] English constitutional history . . ."); see also Peter Stein, *The Attraction of the Civil Law in Post-Revolutionary America*, 52 VA. L. REV. 403, 407-14 (1966) (discussing early 19th century American lawyers' interest in civil law tradition and attributing use of civil law to variety of practical and intellectual factors).

170. Compare Daniel R. Coquillette, *Legal Ideology and Incorporation I: The English Civilian Writers, 1523-1607*, 61 B.U. L. REV. 1, 30-31 (1981) (noting traditional Whig/common-law associations of the civil law tradition in general with royal absolutism), and HOWE, *supra* note 56, at 37 ("[W]e may all admit that down to times long after those of Blackstone the civil law was associated in the minds of many Englishmen with a system that was thought to be most hostile and alien to the liberties of England."), with R.H. Helmholz, *Continental Law and Common Law: Historical Strangers or Companions?*, 1990 DUKE L.J. 1207, 1224-26 (1990) (discussing early American perceptions of civil law as closer to natural law and universal legal principles and concluding that during period "[n]either English nor American lawyers seemed to regard the division between common law and civil law as an absolute and unbridgeable gulf."), and M.H. Hoeflich, *Comparative Law in Antebellum America*, 4 WASH. U. GLOBAL STUD. L. REV. 535, 536 (2005) (stating that, "by the second decade of the nineteenth century, the English common law was widely seen as the legal system of a tyrannous enemy regime," identifying this attitude as one of several "reasons for American jurists to look at other legal systems . . ." for answers to legal problems).

171. See, e.g., Pierre Legrand, *European Legal Systems are Not Converging*, 45 INT'L L. & COMP. L.Q. 52, 64 (1996) (arguing that, despite European comparatists' de-emphasis of civil law-common law difference in support of EU's project of legal integration, the two traditions are "irreducibly different").

in different contexts. Political developments in both spheres of activity prompted ideologically-motivated justifications for such convergence, including the proposition that future mixed systems would be stronger or combine the best of both traditions.<sup>172</sup> Indeed, overcoming civil law-common law difference was inherent to both processes, and the expansion of English common law at the civil law's expense in the bijural systems had additional implications for perceptions of difference in legal terminology.

That perceptions of civil law-common law difference might have affected contemporary attitudes to legal translation of civilian concepts into English should hardly be surprising given the close relationship between legal English and the common law tradition.<sup>173</sup> The stakes are particularly high in mixed jurisdictions where English-speaking judges and lawyers may unknowingly import common law doctrines into civilian jurisprudence via the use of legal English,<sup>174</sup> and the possibility of injury to the civilian interpretative framework is also suggested when we recall that “the language of a civil code in particular, is also a technical and scientific language.”<sup>175</sup> In response, several scholars of Louisiana's civil law tradition caution strongly against such translation approaches and argue convincingly that it is possible to express the civil law in English without adopting the terms and concepts of the common law.<sup>176</sup>

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172. See, e.g., José Trías Monge, *Legal Methodology in Some Mixed Jurisdictions*, 78 TUL. L. REV. 333, 349-50 (2003) (arguing that American colonial judges embraced “Fantasy of the Wise Mix” and “Fantasy of the Unification of Law” as ideological justifications for introduction of common law concepts into early 20th century Puerto Rican and Filipino jurisprudence).

173. See GUTTERIDGE, *supra* note 1, at 117-18; Rotman, *supra* note 1, at 189; Moréteau, *supra* note 1, at 706-09; Levasseur & Feliú *supra* note 1, at 735.

174. See, e.g., T.B. Smith, *The Preservation of the Civilian Tradition*, in CIVIL LAW IN THE MODERN WORLD 16 (Athanasios N. Yiannopoulos ed. 1965) (“[L]et me stress that mixed legal systems which use English as the language of the courts are particularly exposed to subversion through imposition or incautious acceptance of technical terms of Anglo-American common lawyers as equivalents to civilian concepts. A torrent of alien jurisprudence can pour through the breaches thus made.”).

175. ALAIN A. LEVASSEUR, DECIPHERING A CIVIL CODE: SOURCES OF LAW AND METHODS OF INTERPRETATION 61 (2015).

176. See, e.g., Levasseur & Feliú, *supra* note 1, at 717 (arguing that:

Alain Levasseur and Vicenç Feliú in particular have stated that the Louisiana Civil Code's 200-year history is proof that a "uniform" and "consistent" translation into English of civil law concepts of similar lexical origin is feasible, regardless of whether the source language is Spanish or French.<sup>177</sup> Elsewhere, Levasseur and Randall Trahan argue for the special importance of "securing the survival of the civil law tradition in general by anchoring it in the English language and not just any English language, but an English language different from the English language of the common law."<sup>178</sup>

Against this backdrop, Joanni's use of Louisiana's special civilian vocabulary at the turn of the last century appears remarkably prescient. It is perhaps also ironic that his resort to Louisiana's special legal lexicon came at a period in time when that state's future identity as a civilian jurisdiction was itself in doubt, a historical moment reflected in Pound's assumption of the common law's total triumph there.<sup>179</sup> Moreover, the attention to the subtle nuances of civil law-common law difference embraced by Levasseur, Feliú, and Trahan may reflect a high degree of concern for keeping the two tradi-

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[T]here is no need to resort to the legal vocabulary found in the Common Law of England to express the 'civil law in English.' Actually, we are issuing a strong warning against any such attempt. The survival of the civil law system in the English language of the Louisiana Civil Code since 1808 is a vivid testimony that the civil law can exist in 'English' as long as it is an English that has been tested and tried in a civil law environment.);

see also Agustín Parise, *A Translator's Toolbox: The Law, Moreau-Lislet's Library, and the Presence of Multilingual Dictionaries in Nineteenth-Century Louisiana*, 76 LA. L. REV. 1163, 1164-65 (2016) (stating that "[s]cholars both of Continental European and common law systems may look to Louisiana for civil law terminology in English" and arguing that "scholars should esteem the more than 200-year-old tradition of English language civil law codification in Louisiana.").

177. Levasseur & Feliú, *supra* note 1, at 735.

178. Alain A. Levasseur & J. Randall Trahan, *Our Approach to Translation*, in GÉRARD CORNU, *DICTIONARY OF THE CIVIL CODE* xiv (Alain Levasseur & Marie-Eugénie Laporte-Legeais trans., Lexis Nexis 2014).

179. See, e.g., A.N. Yiannopoulos, *Louisiana Civil Law: A Lost Cause?*, 54 TUL. L. REV. 830, 833-34 (1980) (reviewing perceptions of Louisiana lawyers of the 1910s-1930s that the state was no longer a predominantly civilian jurisdiction).

tions separate as independent sources of jurisprudence. At a minimum, they suggest the worldview of the “purist” or “pragmatist” rather than the “pollutionist.”<sup>180</sup> Yet in some eras, legal pollution has been regarded as a virtue, and the difference between pollution and pragmatism has become obscured or contested as particular ideological requirements shifted.

F.L. Joannini worked in such an era. Yet, despite comparatist crosscurrents to the contrary, he remained resolutely sensitive to the implications of legal diversity across numerous translations spanning more than a decade. If, as has been argued here, his contemporaries viewed civil law-common law difference as a matter of terminology and procedure, rather than substance, then it is not surprising that some reviewers were relatively indifferent to the risks inherent in translating civilian concepts into legal English. Certainly, such critics were not likely to welcome the preservation of allegedly superficial civil law-common law distinctions through the introduction or incorporation of unique civilian English terms. This would be especially true if they shared the assumption of some legal scholars that terms such as *compensation*, *transaction*, and *dation* survived only as civilian fig-leaves for nakedly universal legal categories. Such attitudes may also help explain the mix of positive and negative reviews for Joannini’s Argentine Civil Code translation and that of Wheless after him. Indeed, the fact that in a slightly-different context Clifford Walton took a radically divergent approach and largely escaped criticism for it suggests how unpredictable opinions on civil law-common law difference were at the beginning of the last century.

“Translation illustrates the inseparability of law and language, and the field of translation is an extraordinarily rich source for insights into the process of comparison,” states one comparatist

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180. See Palmer, *supra* note 148, at 39-44 (offering a paradigm for mixed jurisdiction “purists” and “pollutionists”).

scholar.<sup>181</sup> In the case of Joannini's Spanish-English civil code translations, both the translator's method and contemporary comparatist reviews are indeed "rich sources." Each provides us with a glimpse of early 20th century comparatist perceptions of civil law-common law difference at a critical moment in the history of Pan-Americanism and in the evolution of this country's current and former mixed legal systems. Joannini's embrace of the special civilian language of the Louisiana Civil Code also demonstrates yet another way in which that state's civil law tradition has served as a vehicle for U.S.-Latin American legal comparison.<sup>182</sup>

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181. Vivian Grosswald Curran, *Cultural Immersion, Difference and Categories in U.S. Comparative Law*, 46 AM. J. COMP. L. 43, 54 (1998).

182. See, e.g., Parise, *Hispanic Codifications*, *supra* note 106 (describing influence of Louisiana Civil Code of 1825 on 19th-century Latin American codifications).