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The Encyclopedist Code: Ancien Droit Legal Encyclopedias and Their Verbatim Influence on the Louisiana Digest of 1808

Seth S. Brostoff

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**THE ENCYCLOPEDIIST CODE: *ANCIEN DROIT*
LEGAL ENCYCLOPEDIAS AND THEIR VERBATIM
INFLUENCE ON THE LOUISIANA DIGEST OF 1808**

Seth S. Brostoff*

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* Foreign, Comparative, and International Law Librarian, Louisiana State University Paul M. Hebert Law Center.

ABSTRACT

This Article identifies nearly one hundred articles and provisions in Louisiana's first civil code, the Digest of 1808, which were copied verbatim or almost verbatim (that is, literally or almost literally) from three French legal encyclopedias popular during the Ancien Régime: Lerasle's Encyclopédie méthodique: Jurisprudence (8 vols., 1782–89), Jean-Baptiste Denisart's Collection de décisions nouvelles (1st ed., 6 vols., 1754–56), and Joseph-Nicolas Guyot's Répertoire de jurisprudence (2d ed., 17 vols., 1784–85). As the Appendix indicates, verbatim and almost verbatim extracts from Lerasle, Denisart, and Guyot constitute approximately five per cent of the Digest's source material. This Article therefore serves as a supplement (and partial corrective) to Rodolfo Batiza's 1971 and 1974 studies of the Digest's "actual sources".

The present study argues that the Digest's primary redactor, Louis Moreau Lislet, borrowed language from French legal encyclopedia entries largely for pedagogical purposes, including introducing into Louisiana's new civil code civilian definitions and other material that would be useful for lawyers and judges trained in the common law. As a result, Louisiana's first civil code possesses a didactic quality that is absent from its Napoleonic prototype. Equally important, this study suggests that earlier scholars' assumptions that the Digest's source material reflects Louisiana's mixed Spanish-French legal history should be revisited: while discovery of a significant presence of French legal encyclopedic sources certainly reveals the drafter's preference for, and familiarity with, ancien droit legal literature, it further undermines previous assumptions about the widespread indirect influence of Roman and Spanish-Castilian sources.

Keywords: codification, ancien droit, encyclopedias, legal lexicography, Louisiana.

I. INTRODUCTION

In a 1971 study, Professor Rodolfo Batiza of Tulane Law School famously purported to identify the "actual sources" of Louisiana's

first civil code, the Digest of 1808.¹ According to Batiza, most of these sources were French.² In particular, Batiza found that more than 70% of the Digest's provisions had been copied from just three French-language texts: the *Code Napoléon* (1804), its draft *Projet of Year VIII* (1800), and Domat's *Loix Civiles* (1689).³ In a 1974 revised study, Batiza found additional evidence of verbatim borrowing from several other French-language sources, including Joseph-Nicolas Guyot's popular *ancien droit* legal encyclopedia, the *Répertoire de jurisprudence* (1784–85).⁴ Based on his 1971 and 1974 studies, Batiza later concluded that the Digest's primary redactor, the New Orleans lawyer Louis Moreau Lislet (1767–1832),⁵ had used “definitions and additional rules borrowed from the works of Domat, Pothier, and [French] legal encyclopedias” to supplement Digest provisions taken from the *Code civil* and projet.⁶ In contrast,

1. See Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance*, 46 TUL. L. REV. 4, 11 (1971) [hereinafter Batiza 1971] (claiming to identify almost 97% of the Digest's “actual sources”).

2. See *id.* at 12 (concluding that French sources “account for about 85 percent” of the Digest's sources).

3. See *id.* at 11 & nn. 42–43, 45 (attributing 1,495 provisions to “verbatim” or “almost verbatim” equivalents in the *Code Civil*, *Projet*, and *Domat*, or approximately 72% of the 2,081 sources identified in the 1971 study).

4. See RODOLFO BATIZA, 3 SOURCES WHICH HAD A SUBSTANTIAL OR PARTIAL INFLUENCE ON PROVISIONS OF THE LOUISIANA CIVIL CODE OF 1808: THE ORIGINAL TEXTS (1974) [hereinafter BATIZA 1974] (identifying “about 40 provisions” taken from Guyot's *Répertoire de jurisprudence*, Ferrière's French translation of Justinian's *Institutes*, and Antoine Desgodets' *Les loix des bâtimens*). As in BATIZA 1974, all citations to Guyot in the present study are for the second edition: JOSEPH-NICOLAS GUYOT, RÉPERTOIRE UNIVERSEL ET RAISONNÉ DE JURISPRUDENCE CIVILE, CRIMINELLE, CANONIQUE ET BÉNÉFICIALE (1784–85) [hereinafter GUYOT].

5. According to Batiza, Moreau Lislet was the Digest's “sole drafter,” notwithstanding the formal appointment of another lawyer, James Brown, as co-redactor. See Rodolfo Batiza, *Justinian's Institutes and the Louisiana Civil Code of 1808*, 69 TUL. L. REV. 1639, 1644 (1995) [hereinafter *Justinian's Institutes*] (discussing Brown's joint appointment). This Article assumes Moreau Lislet's primary agency, although the degree of Brown's contribution remains a subject of dispute. See John W. Cairns, *Spanish Law, the Teatro de la legislación universal de España e Indias, and the Background to the Drafting of the Digest of Orleans of 1808*, 31 TUL. EUR. & CIV. L.F. 79, 88–90 (2017) (providing evidence of an uneven division of labor rather than a “sole drafter” hypothesis).

6. Batiza, *Justinian's Institutes*, *supra* note 5, at 1641 (emphasis supplied).

Batiza attributed less than 10% of the Digest's provisions to Louisiana's pre-Purchase Spanish law.⁷

Although Batiza's 1974 study identified only a handful of articles in the Digest taken from Guyot's *répertoire*, the Louisiana Code's debt to French legal encyclopedic literature is far more substantial than Batiza initially realized. The present study identifies for the first time nearly one hundred additional Digest provisions copied "verbatim" or "almost verbatim" from Lerasle's *Encyclopédie méthodique: Jurisprudence* (8 vols., 1782–89)⁸ and Jean-Baptiste Denisart's *Collection de décisions nouvelles* (1st ed., 6 vols., 1754–56),⁹ two French legal encyclopedias that Moreau Lislet owned during his lifetime and cited in court, as well as additional provisions borrowed from Guyot's *répertoire* that Batiza's 1974 study omitted.¹⁰

Of Moreau Lislet's three principal French legal encyclopedic sources, the *Encyclopédie méthodique* was undoubtedly the most influential. This now-forgotten multi-volume legal encyclopedia contained many of the law-related entries first published in Denis Diderot's original *Encyclopédie* (28 vols., 1751–56), which Diderot's successor as publisher, Charles-Joseph Panckoucke, had entrusted to a law professor, M. Lerasle, for revision, and then sold to French lawyers as an eight-volume set.¹¹ Importantly, Moreau Lislet relied on verbatim or almost verbatim extracts from the *Encyclopédie méthodique* to draft over seventy Digest articles on topics as wide-ranging as *things, usufruct, partition by licitation, pledge, hypothec,*

7. Batiza 1971, *supra* note 1, at 12–13.

8. M. LERASLE, *ENCYCLOPÉDIE MÉTHODIQUE: JURISPRUDENCE* (1782–89) [hereinafter *Encyc. Juris.*].

9. Unless otherwise noted, citations in the present study are for the 9th edition: J[EAN] B[APTISTE] DENISART, *COLLECTION DE DÉCISIONS NOUVELLES* (1775) [hereinafter ANCIEN DENISART].

10. For individual source attributions to Lerasle, Denisart, and Guyot, see *Appendix* (table of sources).

11. For discussion of Panckoucke's republication of Diderot's *Encyclopédie* in subject-specific encyclopedias, including the compilation of the *Encyclopédie de jurisprudence*, see George B. Watts, *The Encyclopédie Méthodique*, 73 PAPERS MOD. LANG. ASSOC. 348, 364–65 (1958).

dowry, *compromise*, and *possession*. Many of these provisions were later adopted in the Louisiana Civil Code of 1825 and some survive practically unchanged in the current Civil Code. Via Lerasle's volumes, the redactor introduced scores of rules and definitions from Diderot's *Encyclopédie* into Louisiana civil law.¹²

This Article argues that Moreau Lislet's verbatim reliance on French legal encyclopedic literature was neither accidental nor merely ornamental. Rather, the redactor copied entries from Lerasle, Denisart, and Guyot for distinctly pedagogical purposes, including introducing ordinary readers (many trained in the common law) to basic civil law concepts using ready-made French-language definitions; augmenting Digest provisions taken from the French Civil Code and Domat with additional rules; and providing useful advice to litigants lacking formal legal training.¹³ Strategic borrowing from legal encyclopedia entries reveals Moreau Lislet's ambition to draft a civil code that would serve as both a coherent body of legislation for Louisiana as well as an accessible introduction to the civil law tradition.¹⁴

The redactor's extensive reliance on French legal encyclopedic sources also has important implications for ongoing investigations into the possible influence of Roman and Spanish law on the Digest's redaction. During the years prior to Batiza's 1971 study, Louisiana legal scholars had engaged in intensive speculation about the mixed origins of the Digest and the nature of its substantive relationship to Louisiana's pre-Purchase Spanish-Castilian law. Batiza's studies were intended to resolve this debate by identifying the "actual" French-language sources for most of the Digest's articles, as well as non-verbatim Roman, French, and Spanish explanations for the Digest's remaining provisions. However, comparison of the present study's verbatim source attributions (to Lerasle, Denisart, and Guyot) with Batiza's proposed non-verbatim Spanish

12. See Parts III & IV, *infra*.

13. See Part IV, *infra*.

14. See Part V, *infra*.

source attributions from 1971 and 1974 indicates that many of Batiza's non-verbatim sources are wrong and that Spanish and Roman sources were probably less influential in the Digest's redaction than even Batiza initially conceded. More importantly, Moreau Lislet's repeated preference for verbatim copying from French legal literature, especially *ancien droit* sources with which he was familiar from practice, strongly suggests that the redactor's choice in source material was less cosmopolitan than Louisiana legal historians have previously assumed.¹⁵

II. MOREAU LISLET'S FRENCH LEGAL ENCYCLOPEDIAS: THE CODIFIER'S *ANCIEN DROIT* PRACTICE TOOLS

On December 19, 1832, the notary Louis T. Caire prepared an inventory of Moreau Lislet's personal library; the "Man Behind the Digest" had died a few weeks earlier.¹⁶ In his testament, the redactor left over 1,000 volumes, mostly law books, to his executor, Jean Baptiste Desdunes.¹⁷ Among the numerous titles left by Moreau Lislet, Caire's inventory listed the following four works and volume numbers: "Collection de décisions (13)", "Encyclopédie de Jurisprudence (8)", "Collection de décisions (4)", and "Répertoire de Jurisprudence (17)".¹⁸

Although Caire's inventory provides little bibliographical detail, the four titles are nevertheless identifiable from contemporary evidence. In *Greffin's Ex'r v. Lopez* (La. 1817), *Martin's Reports* records Moreau Lislet appearing before the Louisiana Supreme Court and referring the judges to "4 Denisart's Decisions de Jurisprudence,

15. See Parts V & VI, *infra*.

16. See 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, 1172 (2016). For the honorific title *Man Behind the Digest*, see Alain Levasseur's excellent biography of Moreau Lislet: ALAIN LEVASSEUR, MOREAU LISLET: THE MAN BEHIND THE DIGEST OF 1808 (rev. ed. with Vicenç Feliú, Claitor's 2008).

17. See Parise, *supra* note 16, at 1172 & nn. 69–70.

18. See Mitchell Franklin, *Libraries of Edward Livingston and of Moreau Lislet*, 15 TUL. L. REV. 401, 405–06 (1941) (reproducing Caire's inventory).

570, verbo turpitude,” while shortly before his death, the drafter appeared in *De Armas v. City of New Orleans* (La. 1833), where he made reference to “6 Nouveau Denisart, p. 593. Verbo domaine, &c.”¹⁹ The first citation’s volume and page numbers match the 9th edition (4 vols., 1775) of Denisart’s *Collection de décisions*; the second refers to Calenge’s 13-volume continuation (1783–1807) of Denisart’s original work, sometimes called *Nouveau Denisart*.²⁰ These are almost certainly the “Collection de décisions (4)” and “Collection de décisions (13)” listed in the Caire inventory.

Similar evidence confirms Moreau Lislet’s ownership of Lerasle’s *Encyclopédie méthodique: Jurisprudence*. This multi-volume work was part of the Paris publisher Charles-Joseph Panckoucke’s larger project to republish Diderot’s *Encyclopédie* in subject-specific sets. To compile the “*encyclopédie de jurisprudence*” volumes, Panckoucke appointed a special committee of French legal lexicographers, chaired by the law professor M. Lerasle, who together extracted, revised, and expanded the original law-related entries found in the first Paris folio of the famous *Encyclopédie*. Primarily the work of François-Vincent Toussaint (1715–1772) and Antoine-Gaspard Boucher d’Argis (1708–1791), two French-jurists-turned-Diderot collaborators, the original entries in the *Encyclopédie* had contained numerous references to French *coutumes* and Roman law and proved popular with French lawyers.²¹ There is no evidence that Moreau Lislet ever owned the Paris folio, which was both rare and

19. See *Greffin’s Ex’r*, 5 Mart. (o.s.) 145, 148 (La. 1817) (citing ANCIEN DENISART for *turpitude*); *De Armas*, 5 La. 132, 140 (1833) (citing NOUVEAU DENISART for *domaine*).

20. Compare *id.* with 4 ANCIEN DENISART 570 (1775) (*turpitude*); JEAN-BAPTISTE DENISART, 6 COLLECTION DE DÉCISIONS NOUVELLES 593 (1787) (*domaine*) [hereinafter NOUVEAU DENISART].

21. See Lerasle, *Avertissement* in 1 *Encyc. Juris.* v (1782) [hereinafter *Avertissement*] (discussing editorial process); Luigi Delia, *Le droit dans l’Encyclopédie. Cartographies, enjeux, collaborateurs*, 48 RECHERCHES SUR DIDEROT ET SUR L’ENCYCLOPÉDIE 143 (2013) (discussing Toussaint’s and Boucher d’Argis’ contributions to Diderot’s encyclopedia and providing additional biographical details).

expensive.²² However, according to the early law reports, the redactor cited “3 Encyclopédie de Jurisprudence, 74, verbo Communes” in *Orleans Navigation Co. v. City of New Orleans* (La. 1812) and “2 Encyc. Jurisp. 579, 580, verbo Chemin” in *Renthorp v. Bourg* (La. 1816).²³ Both citations match the eight-volume Panckoucke set, confirming that the “Encyclopédie de Jurisprudence (8)” in the Caire inventory is the same title.

Finally, the “Répertoire de Jurisprudence” listed in the Caire inventory is presumably the second edition of Guyot’s highly esteemed work of the same name. Moreau Lislet had relied on Guyot’s *répertoire* in the famous dispute between Edward Livingston and the citizens of New Orleans over ownership of the New Orleans *batture*; in his scholarly *Mémoire au soutien des droits des Etats-unis à la Batture du faubourg S^{te} Marie* (1808), the redactor cited the *répertoire*’s entry on alluvion in defense of the government’s property interests.²⁴ Interestingly, Guyot had earlier served on Lerasle’s revision committee.²⁵ Moreau Lislet was apparently aware of Guyot’s influence on the compilation of the *Encyclopédie méthodique*: in *Morgan v. Livingston* (La. 1819), the Louisiana redactor referred to Lerasle’s volumes as “Guyot’s Encyclopedia.”²⁶

22. Cf. Franklin, *supra* note 18 (Caire inventory). For estimate of the number of copies outside France in late 1700s, see Robert Darnton, *The Encyclopédie Wars of Prerevolutionary France*, 78 AM. HIST. REV. 1331, 1332 (1973).

23. Compare *Orleans Nav. Co.*, 2 Mart. (o.s.) 214, 216 (La. 1812) (Moreau citing “verbo Communes”) and 3 *Encyc. Juris.* 74 (1783) (*commune*); *Renthorp*, 4 Mart. (o.s.) 97, 117 (La. 1816) (Moreau citing “verbo Chemin”) and 2 *Encyc. Juris.* 579 (1783) (*chemin*).

24. See 3 THE PAPERS OF THOMAS JEFFERSON, Retirement series, 12 August 1810 to 17 June 1811, at 174 (J. Jefferson Looney ed. 2006) (Moreau citing Guyot’s *répertoire*, along with Denisart and Lerasle).

25. See *Avertissement*, *supra* note 21, at vi.

26. See *Morgan*, 6 Mart. (o.s.) 19, 27 (Moreau citing “1 Guyot’s Encyc. 288; verbo Alluvion.”).

III. LERASLE, DENISART, AND GUYOT: THREE “ACTUAL SOURCES” OF THE DIGEST OF 1808

Moreau Lislet was familiar with Lerasle, Denisart, and Guyot for another important reason: he had used these same sources decades earlier to draft many of the Digest’s rules and definitions. In 1806, Louisiana’s Creole-dominated legislature had appointed Moreau Lislet and fellow lawyer James Brown (1766–1835) to compile a French-language “civil code” for use in the new Territory of Orleans.²⁷ In an effort to forestall the reception of the Anglo-American common law, the legislature instructed the two redactors to make the “civil law by which this territory is now governed, the ground work of said code.”²⁸ A legacy of the new territory’s recent colonial past, post-Purchase Louisiana “civil law” was still primarily Spanish-Castilian *derecho indiano*.²⁹ Its principal sources included the *Siete Partidas* (1265), *Nueva Recopilación* (1567), and *Recopilación de las Indias* (1680), supplemented by treatises such as Juan de Hevia Bolaños’ *Curia Philipica* (1603) and José Febrero’s *Librería de escribanos* (1783), as well as the *Corpus Juris Civilis* of Roman law.³⁰ However, despite the legislature’s instructions, Moreau Lislet and Brown’s finished project mysteriously resembled a modern French code, not a traditional Spanish compilation.³¹ In

27. See HENRY PLAUCHÉ DART, THE SOURCES OF THE CIVIL CODE OF LOUISIANA 44 (1911); John Tucker, *Source Books of Louisiana Law*, 6 TUL. L. REV. 280, 281 (1932) (quoting June 7, 1806 resolution appointing Moreau Lislet and James Brown as redactors).

28. John T. Hood, Jr., *The History and Development of the Louisiana Civil Code*, 19 LA. L. REV. 18, 24 (1958) (quoting resolution); see also Alain A. Levasseur, *The Major Periods of Louisiana Legal History*, 41 LOY. L. REV. 585, 610–28 (1996) (reviewing political developments leading up to Moreau Lislet and Brown’s appointment).

29. *Id.* at 590–609.

30. See KATE WALLACH, RESEARCH IN LOUISIANA LAW 203–218 (1958) (providing bibliographical overview of Spanish sources in pre-Purchase Louisiana); see also M.C. MIROW, LATIN AMERICAN LAW: A HISTORY OF PRIVATE LAW INSTITUTIONS IN SPANISH AMERICA, Part 1 (2004) (discussing sources of law in Spanish Americas).

31. See John Randall Trahan, *The Continuing Influence of le Droit Civil and el Derecho Civil in the Private Law of Louisiana*, 63 LA. L. REV. 1019, 1026

structure, the Digest had the “classic three-book arrangement” of the *Institutes of Gaius* and the *Code Napoléon*, while in phraseology, Batiza’s 1971 study confirmed the drafters’ near-complete reliance on French-language models.³² Indeed, Batiza attributed less than 10% of the Digest’s provisions to the “possible influence” of non-verbatim provisions in the *Partidas*, *Curia Philipica*, and Febrero.

Consistent with Batiza’s earlier findings of the redactors’ overwhelming reliance on French-language models, the Appendix to this study identifies for the first time nearly one hundred additional Digest provisions that Moreau Lislet copied verbatim or almost verbatim (i.e., literally or almost literally) from French legal encyclopedias, specifically Lerasle’s *Encyclopédie méthodique* (74 Digest provisions); Denisart’s *Collection de décisions* and/or *Nouveau Denisart* (12 provisions); and Guyot’s *répertoire* (2 additional provisions); as well as three provisions taken from either Lerasle or Guyot.³³ For reasons that will become evident later, no attempt has

(2003) (describing Digest as “heavily indebted to the *French* civil-law tradition” for its “form” and “structure”).

32. See Vernon Valentine Palmer, *The French Connection and the Spanish Perception: Historical Debates and Contemporary Evaluation of French Influence on Louisiana Civil Law*, 63 LA. L. REV. 1067, 1074 (2003) (discussing Digest’s “classic three-book arrangement” and resemblance to *Code Napoléon*); see also Olivier Moréteau, *The Louisiana Civil Code in French: Translation and Re-translation*, 9 J. CIV. L. STUD. 223, 230–31 (2016) (noting similarities in Digest’s structure and *Institutes of Gaius*).

33. See *Appendix* to the present study (table of sources). In some instances, it was not possible to distinguish between two phraseologically-similar encyclopedia entries, especially where sources exhibit a mutual reliance on an earlier (sometimes recognizable, sometimes indeterminate) third source. Indeed, Lerasle and Guyot had both copied from the Paris folio, as well as from each other. See *Avertissement*, *supra* note 21, at vi (Lerasle, justifying the *Encyclopédie méthodique*’s copying from Guyot’s first edition, while also noting that Guyot had borrowed entries in his 1775–83 *répertoire* from Diderot). For this reason, many of Batiza’s 1974 attributions to Guyot’s *répertoire* are actually for provisions that come from Lerasle. For example, Batiza wrongly attributed Bk. III, Tit. I, Art. 172, a verbatim equivalent of 5 *Encyc. Juris*. 593, ¶ 1 (on licitation), to an “a.v. (in part)” provision in Guyot’s *répertoire*; likewise, he attributed Bk. III, Tit. XX, Art. 2, a verbatim equivalent of 6 *Encyc. Juris*. 247, ¶ 2 (on occupancy), to a “substantially identical” provision found in Guyot. However, in both cases, Lerasle has the stronger claim on the basis of phraseological resemblance and identical paragraph structure.

been made to trace the possible non-verbatim influence of French legal encyclopedia entries on the rest of the Digest.

As a whole, the findings in the Appendix's table of source attributions are significant: in total, *ancien droit* encyclopedia entries constitute the Digest's most-influential genre of source material after the French codes and *ancien droit* commentators,³⁴ accounting for almost 5% of the 1808 code's 2,000 or so provisions, while Lerasle's *Encyclopédie méthodique* is the Digest's fourth most frequently copied verbatim source after the *Code civil*, the *Projet of Year VIII*, and the *Loix Civiles*.³⁵

To illustrate the redactor's technique, Table 1 provides a representative example of Moreau Lislet's verbatim use of entries in French legal encyclopedias to draft articles for Louisiana's first civil code. Table 1 begins by reproducing in column 1 the official French-language text for Articles 1–3 in Book III, Title XX (of Occupancy, Possession and Prescription).³⁶ The three articles define the civilian concept of *occupation*, or novel possession, as well as the Roman-influenced “*cinq manières*” of acquiring property by occupancy.³⁷

34. Compare the present study (Appendix identifying 90 provisions taken verbatim or almost verbatim from French legal encyclopedic literature) with Batiza's 1971 study, which identified 1,531 source attributions for French legislation (the *Code civil*, projet, Custom of Paris, and Ordinance of 1667) and 306 source attributions for French commentators (Domat, Pothier, and Domat/Pothier). Cf. Batiza 1971, *supra* note 1, at 11–12 & n.47.

35. With respect to verbatim and almost verbatim source attributions (i.e., excluding hypothetical non-verbatim relationships), Batiza's 1971 study traced 713 Digest provisions to the *Projet of Year VIII*, 675 to the *Code civil*, and 107 to Domat's *Loix Civiles*. See Batiza 1971, at 11 & nn. 42–43, 45. Lerasle's 71 verbatim or almost verbatim source attributions therefore rank fourth, well ahead of Pothier (32 almost verbatim provisions). Cf. Batiza 1971, *supra* note 1, at 11 & n.46.

36. All French-language Digest references are to the original Bradford & Anderson edition, A DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS (1808) [hereinafter Dig. Orl.], published online by the LSU Center of Civil Law Studies (CCLS), available at <https://perma.cc/R77Q-N69Z>. For discussion of CCLS' Digest Online Project, see Agustín Parise, *The Digest Online Project: A Resource to Disseminate the Legal Heritage of Louisiana*, 12 J. CIV. L. STUD. 283 (2020); Olivier Moréteau & Agustín Parise, *The Bicentennial of the Louisiana Civil Code (1808-2008)*, 2 J. CIV. L. STUD. 195, 197–98 (2009).

37. See, e.g., J. Inst. 2.1.12. Cf. David V. Snyder, *Possession: A Brief for Louisiana's Rights of Succession to the Legacy of Roman Law*, 66 TUL. L. REV. 1853 (1992) (discussing similarity of Articles 2 and 3 in Title XX with rules of

Meanwhile, column 2 provides nearly-verbatim equivalents of Articles 1–3 from the entry on ‘Occupation’ in the *Encyclopédie méthodique*.³⁸ Finally, column 3 reproduces two paragraphs from Boucher d’Argis’ original entry on the same subject in the Paris folio; the two paragraphs in column 3 suggest the indirect phraseological relationship between the Louisiana Digest and Diderot’s *Encyclopédie*.³⁹

Table 1.

Dig. Orl. 1808, Book III, Title XX	6 <i>Encyc. Juris.</i> 247 (1786) [Lerasle] (‘Occupation’)	11 <i>L’Encyc.</i> 335 (1765) [Diderot] (‘Occupation’)
<i>Art. 1er. L’occupation est une manière d’acquérir, suivant laquelle les choses qui n’appartiennent à personne, passent au pouvoir et en la propriété de celui qui s’en empare, avec l’intention de se les approprier.</i>	[¶ 1] OCCUPATION, f. f. (Droit naturel, des gens, & civil.) est un moyen d’acquérir, suivant lequel les choses qui n’appartiennent à personne, passent au pouvoir & en la propriété de celui qui s’en empare, avec l’intention de se les approprier.	[¶ 2] Occupation est aussi un moyen d’acquérir du droit des gens, suivant lequel les choses appelées nullius, c’est-à-dire, qui n’ont point de maîtres, & les choses appartenantes aux ennemis sont au premier occupant.
<i>Art. 2. Il est donc nécessaire pour que l’occupation soit un moyen légitime d’acquisition, que la chose occupée n’ait point de maître, qu’elle soit de</i>	[¶ 2] Il est donc nécessaire, pour que l’occupation soit un moyen légitime d’acquisition, que la chose occupée n’ait point de maître; qu’elle soit de	[no equivalent]

Roman law, rejecting Pothier’s candidacy as an “actual source” for these articles, and (rightly) concluding that, “[t]he redactors must have relied on the *Institutes* directly, or on some other source.”)

38. See 6 *Encyc. Juris.* 247, ¶¶ 1–3 (1786) (‘Occupation’).

39. See 11 DENIS DIDEROT & JEAN LE ROND D’ALEMBERT, *ENCYCLOPÉDIE OU DICTIONNAIRE RAISONNÉ DES SCIENCES, DES ARTS ET DES MÉTIERS* 335, ¶¶ 2–3 (1765) (‘Occupation’) [hereinafter *L’Encyc.*].

Dig. Orl. 1808, Book III, Title XX	6 <i>Encyc. Juris.</i> 247 (1786) [Lerasle] ('Occupation')	11 <i>L'Encyc.</i> 335 (1765) [Diderot] ('Occupation')
<i>nature à être appréhendée ou conservée, et que l'occupant la détienne effectivement sous sa main, avec l'intention de la garder.</i>	<i>nature à être appréhendée & conservée, & que l'occupant la détienne effectivement sous sa main, avec l'intention de la garder.</i>	
<p><i>Art. 3. Il y a cinq manières d'acquérir ainsi par occupation, savoir:</i> <i>La chasse aux bêtes fauves;</i> <i>La chasse à l'oiseau;</i> <i>La pêche;</i> <i>L'invention, c'est-à-dire, lorsqu'on trouve des perles sur le bord de la mer, des choses abandonnées, ou un trésor;</i> <i>Le butin que l'on fait sur les ennemis.</i></p>	<p>[¶ 3] <i>Il y a, suivant le droit romain, cinq manières d'acquérir ainsi par occupation; savoir, venatus, la chasse aux bêtes fauves; aucupium, qui est la chasse à l'oiseau; piscatio, la pêche; inventio, lorsqu'on trouve des perles sur le bord de la mer, des choses abandonnées, ou un trésor; enfin, praeda bellica, c'est-à-dire, le butin que l'on fait sur les ennemis. Voyez les instit. lib. 2, tit. 1.</i></p>	<p>[¶ 3] <i>Il y a, suivant le droit romain, cinq manières d'acquérir ainsi par occupation; savoir, venatus, la chasse aux bêtes fauves; aucupium, qui est la chasse à l'oiseau; piscatio, la pêche; inventio, comme quand on trouve des perles sur le bord de la mer, des choses abandonnées, ou un trésor; enfin, praeda bellica, c'est-à-dire, le butin que l'on fait sur les ennemis. Voyez les instit. liv. II. tit. 1.</i></p>

As Table 1 reveals, the *Encyclopédie méthodique* is the clear “actual source” for Articles 1–3: the degree of phraseological similarity between Title XX’s definition of *occupation* and Lerasle’s entry on the same topic, as well as the consistency in paragraph structure (Articles 1–3 in Title XX are practically interchangeable with ¶¶ 1–3 in Lerasle’s entry), evidence the redactor’s close reliance on

Lerasle. On the other hand, the drafter's possible *direct* dependence on Diderot's original *Encyclopédie*, or another source based on the Paris folio, may safely be excluded; although the definitions in the Digest and Diderot are similar with respect to Article 3 (the " *cinq manières*"), Article 1 is closer in style and lexicon to Lerasle, while Article 2 has no equivalent at all in Boucher d'Argis' original entry.⁴⁰

In retrospect, the fact that Moreau Lislet copied Digest articles from Lerasle and other French legal encyclopedias should not be surprising; indeed, the drafter was arguably following in the footsteps of his French counterparts. As Batiza noted elsewhere, the "number of works used by the draftsmen [of the French Civil Code] was quite impressive" and included not only institutional literature but also "several legal multi-volumed encyclopedias such as those by *Denisart and Guyot*."⁴¹ Batiza even claimed that the First Cambacérès Projet of 1793 could be "reconstructed almost in its entirety" with texts from Domat, Pothier, Denisart's *Décisions nouvelles*, and Guyot's *répertoire*.⁴² In other words, the French draftsmen had been eclectic in their choice of source material and often found inspiration in legal encyclopedic literature; the Louisiana redactor proved no different. On both sides of the Francophone Atlantic, codifiers were drawing on similar sources.

40. Similar evidence from the Digest provisions on *licitation* confirms the drafter's use of Lerasle rather than the Paris folio. Compare Dig. Orl., Bk. III, Tit. I, Art. 173–174 with 5 *Encyc. Juris.* 493, ¶¶ 8, 7, 10 ('*Licitation*') (almost verbatim equivalence between Digest and Lerasle for all three articles); contra 9 *L'Encyc.* 485, ¶¶ 8, 7 (missing equivalent provision for Art. 174).

41. See Rodolfo Batiza, *The French Revolution and Codification: Comment on the Enlightenment, the French Revolution, and the Napoleonic Codes*, 18 VALP. U. L. REV. 675, 678 (1984) (emphasis supplied).

42. See Rodolfo Batiza, *Origins of Modern Codification of the Civil Law: The French Experience and Its Implications for Louisiana Law*, 56 TUL. L. REV. 477, 526 (1982) [hereinafter *Modern Codification*].

IV. THE ENCYCLOPEDIST CODE: THE REDACTOR'S PEDAGOGICAL
MOTIVATIONS EXAMINED

What circumstances motivated Moreau Lislet to resort to French legal encyclopedic sources when drafting the Digest? How and in what contexts did he use encyclopedia entries as verbatim source material? The following analysis reveals three discernible patterns that help answer these questions. First, Moreau Lislet copied definitions from encyclopedia entries in order to **introduce** basic civil law concepts to a general or lay readership, usually at the beginning of Digest titles and chapters. Second, the redactor used French legal encyclopedia entries to **supplement** Digest provisions taken from the *Code civil*, projet, or Domat, especially where he felt the French codes or Domat insufficient or inadequate. Third, the drafter copied encyclopedic source material to **clarify** the purpose behind new code articles or **resolve potential ambiguities** in existing practice. While distinct, Moreau Lislet's patterns of verbatim borrowing collectively reveal a concerted effort to provide Louisiana's bench and bar with a civil code that was both didactic in spirit as well as explanatory in style.

A. Examples of Encyclopedic Borrowing: Introductory Rules and Definitions

The most common reason Moreau Lislet consulted French legal encyclopedia entries was to reproduce their initial descriptions of basic civil law concepts. Indeed, as the Appendix's table of sources indicates, a substantial number of the Digest's introductory rules and definitions come not from the French codes or Domat, but from Lerasle, Denisart, and Guyot. These include the Digest's definitions for *biens* and *choses* in Book II, Title I (copied from Lerasle);⁴³ *usufruit* in Book II, Title III (Denisart);⁴⁴ *partage*, *licitation*, and *rappports a*

43. Dig. Orl., Bk. II, Tit. I, Art. 1–3; cf. 2 *Encyc. Juris.* 43, ¶ 1 ('*Biens*'); 2 *Encyc. Juris.* 620, ¶¶ 5, 9 ('*Chose*').

44. Dig. Orl., Bk. II, Tit. III, Art. 1–4; cf. 4 ANCIEN DENISART 665, num. 1–2, 5–6 ('*Usufruit*').

*succession*⁴⁵ in Book III, Title I (Lerasle), *atermoiement* (“respite”) in Book III, Title XVI (either Guyot or Lerasle);⁴⁶ *hypothèque* in Book III, Title XIX (Lerasle);⁴⁷ and the articles on *occupation* from Title XX in Table 1 (also from Lerasle).

Importantly, Moreau Lislet placed these encyclopedia-derived definitions at the beginning of Digest titles and chapters, where they typically serve as didactic prelude to more-detailed provisions borrowed from the *Code civil* and projet. Strategic placement of encyclopedia-derived definitions at the beginning of Digest titles suggests the drafter’s intention to provide readers with relevant background and context for the legal rules that follow. The four chapters in Book II, Title I (of Things) offer a representative example of Moreau Lislet’s layering of source material for this purpose. Title I begins with Chapter 1’s basic rules regarding the distinction between categories of things, which the redactor largely copied from introductory paragraphs in Lerasle’s entries on ‘*Biens*’ and ‘*Choses*’.⁴⁸ In contrast, Chapters 2–4 provide more-specific rules regulating immovables, moveables, and estates; according to Batiza’s 1971 study, Moreau Lislet borrowed these provisions from the *Code civil* and projet.⁴⁹

Not surprisingly, many of the Digest of 1808’s encyclopedia-derived articles were subsequently incorporated into the Civil Code of 1825, and several survive practically unchanged in the present

45. *Partage*: Dig. Orl., Bk. III, Tit. I, Art. 157–158; cf. 6 *Encyc. Juris.* 475, ¶¶ 1, 12–13 (‘*Partage*’). *Licitation*: Dig. Orl., Bk. III, Tit. I, Art. 172–174; cf. 5 *Encyc. Juris.* 493, ¶¶ 1, 7–8, 10 (‘*Licitation*’). *Rapports a succession*: Dig. Orl., Bk. III, Tit. I, Art. 192; cf. 7 *Encyc. Juris.* 186, ¶ 1 (‘*Rapport a succession*’).

46. Dig. Orl., Bk. III, Tit. XVI, Art. 1–3, 5; cf. 1 *Encyc. Juris.* 540, ¶¶ 1–4 (‘*Atermoiement*’); but cf. 3 BATIZA 1974, at 112 (proposing “a.v. (in part)” attribution to Guyot).

47. Dig. Orl., Bk. III, Tit. XIX, Art. 2; cf. 5 *Encyc. Juris.* 99, § 1, ¶¶ 1–2 (‘*Hypothèque*’).

48. Title I, chapter 1 contains 12 articles. Art. 1–3, 5–6, and 10–12 come verbatim or almost verbatim from the *Encyclopédie méthodique*. See Appendix (supporting references). Batiza traced Art. 7 to Domat, while Art. 4, 8 and 9 reflect Roman rules found in the *Institutes*. See Batiza 1971, *supra* note 1, at 62.

49. Chapters 2–4 contain 22 articles. According to Batiza, all but three provisions (Art. 13, 19 and 29 (in part)) follow the *Code civil* and/or *Projet of Year VIII*. See Batiza 1971, *supra* note 1, at 63.

code.⁵⁰ For example, current Civil Code Articles 449 (“Common things may not be owned by anyone. They are such as the air and the high seas. . . .”) and 1295 (“Definitive partition is that which is made in a permanent and irrevocable manner. . . .”) are both introductory provisions about basic civil law concepts that Moreau Lislet originally took verbatim from the *Encyclopédie méthodique* two centuries ago.⁵¹ In fact, Lerasle’s own entries are themselves “almost verbatim” equivalents of Diderot’s originals, thus making the Paris folio the *indirect* source for both provisions.⁵² Characteristic of the Digest’s Lerasle-derived material, the two Civil Code articles

50. Others have only recently been eliminated. For example, in Book III, Title XVIII (of Pledge), Moreau Lislet originally copied Articles 4 (“One may pawn every moveable which is into commerce.”) and 19 (“The debtor who takes away the pledge without the creditor’s consent, commits a sort of theft.”) from Lerasle’s entry on ‘Gage’. Both provisions were first published in Diderot’s *Encyclopédie* and both survived more or less unchanged until the 2015 revision of the Civil Code’s title on pledge.

“One may pawn”: Compare language in LA. CIV. CODE art. 3154 (1870), a modified version of Dig. Orl. Bk. III, Tit. XVIII, Art. 4, which was copied verbatim from 4 *Encyc. Juris.* 679, ¶ 5 (‘Gage’), which was in turn copied verbatim from 7 *L’Encyc.* 414, ¶ 7 (‘Gage’).

“Sort of theft”: Compare language in LA. CIV. CODE art. 3173 (1870), which is identical with Dig. Orl. Bk. III, Tit. XVIII, Art. 19, which had been copied almost verbatim from 4 *Encyc. Juris.* 680, ¶ 14 (‘Gage’), and, indirectly, 7 *L’Encyc.* 414, ¶ 34 (‘Gage’). For discussion of the revision of the title on pledge, see Michael H. Rubin, *Ruminations on the Louisiana Law of Pledge*, 75 LA. L. REV. 697 (2015).

51. “Common things”: Compare LA. CIV. CODE ANN. art. 449 (2019) with Dig. Orl., Bk. II, Tit. I, Art. 3: “Things which are common are those whose property belongs to nobody, and which all men may freely use, comfortably to the use for which nature has intended them, such as air, running water, and the sea and its shores.” Article 3 in the Digest was adopted with minor variation as Article 441 in the 1825 Civil Code, and as Article 450 in the Revised Civil Code (1870). See 3 LA. LEGAL ARCHIVES, *Compiled Edition of the Civil Codes of Louisiana* 255 (1940). Article 450 was revised again in 1978, but the phraseology and meaning have not changed substantially. See A.N. YIANNOPOULOS & RONALD J. SCALISE JR., PROPERTY § 3:2, in 2 LOUISIANA CIVIL LAW TREATISE (5th ed. 2019).

For Article 3’s dependence on *Encyclopédie méthodique*, compare Dig. Orl., Bk. II, Tit. I, Art. 3 and 2 *Encyc. Juris.* 620, ¶ 9 (‘Chose’).

Partition: Compare LA. CIV. CODE ANN. art. 1295 (2019) with Dig. Orl. Bk. III, Tit. I, Art. 158: “Every partition is either definitive or provisional; definitive partition is that which is made in a stable and irrevocable manner.”

For Article 158’s dependence on the *Encyclopédie méthodique*, compare Dig. Orl. Bk. III, Tit. I, Art. 158 and 6 *Encyc. Juris.* 475 ¶¶ 12–13 (‘Partage’).

52. Cf. 3 *L’Encyc.* 374, ¶ 7 (‘Choses’); 12 *L’Encyc.* 85, ¶¶ 23–24 (‘Partage’).

are illustrative rather than regulative; they read more like the encyclopedia entries that inspired them than modern codified legislation.

B. More Examples of Encyclopedic Borrowing: Supplementing the French Code and Domat

Another common reason Moreau Lislet turned to French legal encyclopedic literature when drafting Digest articles was to augment rules taken from the *Code civil* or Domat. Supplementation took two forms. First, the drafter often used verbatim extracts from encyclopedia entries to expound or amplify more-succinct provisions borrowed from the French code or the *jurisconsulte auvergnat*. For example, according to Batiza's 1971 study, Moreau Lislet copied most of Book III, Title XVIII's twenty-seven articles on pledge from the *Code civil* and/or the *Projet of Year VIII*.⁵³ Unbeknownst to Batiza, the *Encyclopédie méthodique's* entry on 'Gage' accounts for the rest of the title's provisions.⁵⁴ The intercalation of Title XVII's encyclopedia-derived articles with the French Code's provisions is typical of the drafter's conservative technique of supplementation: Moreau Lislet used Lerasle's description of the rights and duties of debtor

53. See source attributions in Batiza 1971, *supra* note 1, at 125: Articles 1, 5–9, 12–14, 16–17, 22–27 (copied verbatim or almost verbatim from the French code and projet) and Articles 2–3, 11 (substantially influenced by these sources).

54. See *Appendix* (identifying Lerasle as verbatim or almost verbatim source for Articles 4, 10–11, 15, 18–21). In contrast, Batiza's 1971 study had proposed Pothier's treatise on *Nantissement* and Domat's *Loix Civiles* as non-verbatim "substantially influential" sources for most of the missing articles. See Batiza 1971, at 125 (attributing Articles 4 and 15 to "substantial influence" of Pothier; Articles 10 and 18–21 to "substantial" or "partial" influence of Domat). However, when the *Encyclopédie méthodique* source material is properly taken into account, Pothier and Domat become superfluous as "actual sources" for Title XVIII. Indeed, it seems strange that Moreau Lislet would have relied on Pothier verbatim in several other titles of the Digest but used only the non-verbatim concepts from the French jurist's treatise on *Nantissement* for the Digest's articles on pledge. The identification of these articles' "actual sources" in French encyclopedic literature confirms this intuition.

and creditor to augment, rather than modify, the *Code Napoléon*'s provisions on *pawns* and *antichresis*.⁵⁵

Second, Moreau Lislet regularly formed single (composite) articles for the Digest by combining fragments from the *Code civil* or Domat with verbatim extracts from Lerasle. The drafter typically did so by inserting encyclopedia-derived language between or immediately after extracts from Domat or articles from the French Code, thereby elucidating or interpreting the more-laconic provisions in the Napoleonic legislation or the *Loix Civiles*. At the same time, the drafter's unusual method sometimes led to integrated provisions that subtly changed the original meaning of the *ancien droit* or post-Revolutionary sources. Tables 2–4 on the following pages provide a survey of the drafter's creative approach using examples taken from Book II, Title III, Article 27 (standard of care for usufructuary); Book III, Title I, Article 206 (collation of goods); and Book III, Title XVII, Article 4 (scope of arbitrability).

Table 2.

Dig. Orl. II.3.27

Dig. Orl. 1808, Book II, Title III, Art. 27	Domat's <i>Loix Civiles</i>, Part. I, Liv. I, Tit. XI, Sect. IV, n. III (1723)	8 <i>Encyc. Juris.</i> 159, § II, ¶ 11 ('<i>Usufruit</i>') (1789)
[1] <i>L'usufruitier doit conserver les choses dont il a l'usufruit et en avoir le même soin que prend un bon père de famille de ce qui est à lui.</i>	[=1] <i>Le troisième engagement de l'usufruitier est de conserver les choses dont il a l'usufruit, & d'en avoir le même soin que prend un bon pere de famille de ce qui est à luy c.</i>	

55. That is, the articles taken from Lerasle do not contradict the *Code civil*'s general provisions on *pawn* and *antichresis*, which Moreau Lislet otherwise followed. See Batiza 1971, *supra* note 1, at 125–26.

<i>[2] Ainsi il est responsable des détériorations qui proviennent de son dol, de sa faute ou de sa négligence.</i>		<i>[=2] L'usufruitier est responsable des détériorations qui proviennent de son dol, de sa faute ou de sa négligence.</i>
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Table 3.*Dig. Orl. III.1.206*

Dig. Orl. 1808, Bk. III, Title I, Article 206	7 <i>Encyc. Juris.</i> 187, § I ('Rapport a succession') (1787)	Code civil, Article 854
<p><i>[1] Néanmoins tous les actes faits par un ascendant et dont quelques-uns de ses descendants ressentent de l'avantage, ne sont pas sujets à rapport; il n'y a que ceux par lesquels l'ascendant fait passer quelque chose de ses biens à quelqu'un de ses descendants, par une voie couverte et indirecte.</i></p> <p><i>[2] Ainsi il n'est pas dû de rapport pour les associations faites sans fraude, entre l'ascendant et l'un de ses descendants légitimes; lorsque les conditions en sont prouvées d'une manière certaine.</i></p> <p><i>[3] Il en est de même de toutes les obligations à</i></p>	<p><i>[p. 187, ¶ 3] [=1] Il faut cependant remarquer que tous les actes d'un père ou d'une mère, dont quelqu'un de leurs enfans [sic] ressent quelque avantage, ne sont pas sujets à rapport; il n'y a que ceux pour lesquels les père & mère sont passer quelque chose de leurs biens à quelqu'un de leurs enfans par une voie couverte & indirecte. . . .</i></p> <p><i>[p. 189, ¶ 8] [=3] Les obligations à titre</i></p>	<p><i>[=2] 854. Pareillement, il n'est pas dû de rapport pour les associations faites sans fraude entre le défunt et l'un de ses héritiers, lorsque les conditions en ont été réglées par un acte authentique.</i></p>

<i>titre onéreux et des actes de commerce que le fils passe avec son père, lesquels ne donnent ouverture au rapport, que lorsqu'il s'y trouve de la part du père, une intention expresse ou tacite d'avantager son fils, et qu'en même-tems il sort, par ce moyen, quelque chose du patrimoine de l'un pour entrer dans celui de l'autre.</i>	<i>onéreux, & les actes de commerce que le fils passe avec son père, ne donnent ouverture au rapport que lorsqu'il s'y trouve, de la part du second, une intention expresse ou tacite d'avantager le premier, & qu'en même temps il sort par ce moyen, quelque chose du patrimoine de l'un, pour entrer dans celui de l'autre.</i>	
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Table 4.*Dig. Orl. III.17.4*

Dig. Orl. 1808, Book III, Title XVII, Art. 4	Domat's <i>Loix Civiles</i>, Part. I, Liv. I, Tit. XIV, Sect. I, n. IV (1723)	3 <i>Encyc. Juris.</i> 113, ¶ 6 ('<i>Compromis</i>') (1783)
<i>[1] On peut compromettre, en général, de tous différens, ou seulement de quelques-uns, en particulier, [2] comme aussi on peut compromettre sur un procès à mouvoir, de même que sur un procès déjà mû, et généralement, de toutes choses qui concernent les</i>	<i>[=1] On peut compromettre ou en general de tous differens, ou seulement de quelques-uns en particulier. . . .</i>	<i>[=2] On peut compromettre sur un procès à mouvoir, de même que sur un procès déjà mû, & généralement de toutes choses qui</i>

<i>parties, et dont elles peuvent disposer.</i>		<i>concernent les parties, & dont elles peuvent disposer.</i>
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As the three composite articles in Tables 2–4 demonstrate, Moreau Lislet generally used Lerasle to **modify or amplify** Domat and/or the *Code civil*, rather than the other way around. For example, in Book II, Title III, Moreau Lislet copied the first clause of Article 27 from Domat’s *Loix Civiles*, while the second clause he took verbatim from the *Encyclopédie méthodique*’s entry on ‘*Usufruit*’. The additional language from Lerasle principally serves to explicate, rather than qualify, Domat’s usufructuarial standard of care, specifying that liability will arise from waste due to fraud, default, or negligence. Likewise, in Article 206, the redactor “sandwiched” Article 854 in the *Code civil* between two verbatim fragments taken from Lerasle’s entry on ‘*Rapport a succession*’; again, the fragments merely illustrate additional applications or contexts for the French Code’s rule. Finally, in drafting Article 4, Moreau Lislet paired Domat’s articulation of the principle of party autonomy in arbitration with Lerasle’s litany of circumstances in which parties may submit disputes to third-party neutrals. The result is Article 4’s broad presumption in favor of arbitrability. Atypically, the composite provision has gone beyond both Domat’s original principle of contractual freedom and Lerasle’s description of the various contexts in which it is advisable to compromise in order to enshrine a definite policy in favor of informal dispute resolution.

C. Even More Examples of Borrowing: Unsolicited Legal Advice Versus Clear Legal Rules

The final appeal of French legal encyclopedia entries for Moreau Lislet was their treasury of insights into the nuances of legal practice. As legislative texts, the French Civil Code and the *Projet of Year VIII* were necessarily concerned with the positing of clear legal

rules. These rules were typically expressed in a short, epigrammatic style.⁵⁶ In contrast, French legal encyclopedic literature contained lengthier descriptions of how legal institutions functioned in their everyday context. In the same spirit and for similar reasons, Moreau Lisset occasionally copied informative extracts from legal encyclopedia entries directly into the Digest, where they served to emphasize best practices or provided helpful legal advice.

Book III, Title XVII (of Arbitration) provides an example of this perhaps surprising aspect of the redactor's technique. In Title XVII, Moreau Lisset copied both Articles 24 and 25 from ¶¶ 5–6 in the *Encyclopédie méthodique* entry on 'Arbitre'.⁵⁷ The structure and style of the two articles reflect the original encyclopedia entry's competing impulses to articulate broader legal principles while also providing readers with practical help. For example, Article 24's first clause explains that the arbitrators' power to decide disputes is dependent on the terms of the submission (what the civil law calls the contract of *compromise*), while the second clause goes on to warn parties seeking to refer disputes to amicable compounders (arbitrators who decide *ex aequo et bono*) to do so explicitly in the initial agreement to arbitrate.⁵⁸ Otherwise, the Digest cautions, the

56. See, e.g., Jean Louis Bergel, *Principal Features and Methods of Codification*, 48 LA. L. REV. 1073, 1088 (1988) [hereinafter *Principles*] ("The phraseology of codes . . . shows certain traits. The expression of the rules of law is generally direct and impersonal.") (describing imperative style as *sine qua non* of code phraseology).

57. Compare Dig. Orl., Bk. III, Tit. XVII, Art. 24–25 and 1 *Encyc. Juris.* 409, ¶¶ 5–6 ('Arbitre').

58. Note that the *Encyclopédie méthodique*'s implicit presumption against amicable composition was contrary to pre-Purchase Spanish law. See, e.g., CURIA PHILIPICA 434, num. 13 (2 vols., 1797) [hereinafter *Cur. Phil.*] ("*Arbitros* [i.e., regular arbitrators] *se dicen los que proceden, y determinan segun derecho; y arbitraores* [i.e., amicable compounders] *los que lo hacen á su arbitrio, conforme una ley de Partida. Y si por el Compromiso no consta si fue hecho en árbtros, ó arbitraores, se presume ser hecho en arbitraores, segun Lanfranco de Oriano, y Parladorio.*") (emphasis supplied). The rule in *Curia Philipica* had not changed by the mid-nineteenth century. See 1 JOAQUÍN ESCRICHE, DICCIONARIO RAZONADO DE LEGISLACIÓN Y JURISPRUDENCIA 327 (2d. ed. 1838) ("*No resultando del compromiso si se han nombrado árbtros ó arbitraores, se presume haberse nombrado arbitraores. . .*").

arbitrators run the risk of exceeding their power and their award will be null:

Art. 24. [1] Les arbitres ne peuvent excéder les bornes du pouvoir qui leur est donné, à peine de nullité de leur sentence; [2] cependant, si les parties les ont autorisés à prononcer, comme amiables compositeurs, ou selon la bonne foi et suivant l'équité naturelle, sans les astreindre à la rigueur de la loi, alors ils ont la liberté de retrancher quelque chose du bon droit de l'une des parties, pour l'accorder à l'autre, et de prendre un milieu entre la bonne foi, et l'extrême rigueur de la loi.⁵⁹

The hybrid purpose and structure of Article 25 is similar. While the first clause of Article 25 reaffirms Article 24's general principle that arbitral power is circumscribed by the terms of the compromise, the second clause suggests that, as a consequence of this principle, parties to arbitration "ought" to, as a precaution, insert a "general clause" in the initial agreement to arbitrate, lest new disputes arise during the pendency of the submission which the arbitrators lack authority to resolve:

Art. 25. [1] Le pouvoir des arbitres ne peut s'étendre que sur les choses contenues dans le compromis, [2] ainsi lorsqu'il survient de nouveaux chefs de contestation, un nouveau pouvoir est nécessaire; pour éviter cet inconvénient, il faut insérer dans le compromis une clause générale, pour donner aux arbitres le pouvoir de juger toutes les contestations qui pourraient survenir entre les parties, pendant le cours de l'arbitrage.⁶⁰

Importantly, neither Article 24 nor Article 25 directly state the legal rules that underly the practical advice being given. Indeed, it is not even clear that a legal rule is being articulated. Instead, the principle that arbitrators depend for their authority on the terms of the parties' initial contract to compromise is disarmingly prefatory for a civil code, while important legal presumptions against amicable composition and plenary power to resolve future-arising disputes

59. Dig. Orl., Bk. III, Tit. XVII, Art. 24.

60. *Id.* at Art. 25.

are left implicit in the broader context of advice about best practices when drafting agreements to arbitrate. Moreau Lislet may have later had second thoughts about including such material in a modern civil code. In the course of the 1825 Civil Code revision process, the Digest's primary redactor, along with fellow revision commissioners Edward Livingston and Pierre Derbigny, re-worded Article 25's original language to resemble legislation rather than advice from a legal encyclopedia, while Article 24's second clause (about the need to appoint amicable compounders explicitly) was removed from the Code altogether.⁶¹

V. BATIZA'S 1971 AND 1974 NON-VERBATIM SPANISH SOURCE
ATTRIBUTIONS RECONSIDERED: SOME FRENCH LEGAL
ENCYCLOPEDIA COUNTER-EVIDENCE

In addition to revealing Moreau Lislet's pedagogical ambitions for Louisiana's first codification project, the presence of a substantial corpus of French legal encyclopedic source material is also relevant to the lingering debate over the extent of Spanish law's influence on the Digest's redaction. In particular, comparison of the present study's verbatim legal encyclopedic source attributions with Batiza's 1971 and 1974 proposed non-verbatim sources indicates that many of Batiza's original non-verbatim (especially Spanish) source attributions are unreliable. Indeed, the Appendix alone identifies at least two dozen Digest provisions that Moreau Lislet copied verbatim from Denisart, Guyot, and Lerasle's encyclopedias but which Batiza wrongly attributed to the *Siete Partidas*, *Curia Philipica*, and *Febrero Adicionado*, as well as the *Corpus Juris*

61. Compare LA. CIV. CODE art. 3089 (1825) (successor to Article 25) ("The authority of arbitrators extends only to the things contained in the submission, unless it has been stated that they shall have power to decide all disputes which may arise between the parties in the course of arbitration."). See also 1 LA. LEGAL ARCHIVES, *Projet of the Civil Code of 1825*, at 360 (1939) (Moreau Lislet, Livingston, and Derbigny recommending suppression of Article 24's second clause); cf. LA. CIV. CODE art. 3088 (1825) (successor to Article 24) ("Arbitrators can not exceed the power which is given to them; and if they exceed it, their award is null for so much.").

Civilis.⁶² The origins of Batiza's mistaken source attributions are easily discovered and, more importantly, suggest that his 1971 and 1974 studies systematically over-estimated the role of Spanish-language "actual sources" in the compilation of the Digest.

A. Batiza's 1971 Methodology Revisited

According to his 1971 study, Batiza began his initial search for the Digest's "actual sources" (verbatim and non-verbatim) with the redaction's "two main [French-language] trails," the *Code civil* and the *Projet of Year VIII*; early in his search, Batiza also consulted Domat and Pothier's commentaries, as well as *ancien droit* legislation.⁶³ In a 1995 article, Batiza boasted that he had "spent only about six months" consulting sources for his 1971 study.⁶⁴ Nevertheless, using this relatively-small selection of French-language works, Batiza was able to locate the "verbatim" or "almost verbatim" (i.e., literal) sources for most of the Digest's 2,000 or so provisions.⁶⁵ Furthermore, in his 1974 revised study, Batiza expanded his search to also include Desgodets' *Loix des bâtimens* (1748), Guyot's *répertoire*, and Ferrière's 1773 translation of Justinian's *Institutes*, where he found additional evidence of direct borrowing.⁶⁶ Yet, if Batiza consulted other genres of French-language source material, or French legal encyclopedias besides Guyot's, he did not acknowledge doing so.⁶⁷ In any event, his 1971 and 1974 studies failed to identify multiple verbatim sources, including Lerasle and Denisart.

Having prematurely exhausted his search for the Digest's French-language verbatim sources, Batiza next proceeded to investigate possible non-verbatim sources for the Digest's remaining

62. See Appendix (supporting references).

63. See Batiza 1971, *supra* note 1, at 10 & n.39.

64. See Batiza, *Justinian's Institutes*, *supra* note 5, at 1646.

65. See Batiza 1971, *supra* note 1, at 10–12.

66. See BATIZA 1974, *supra* note 4, at [i].

67. Cf. Batiza 1971, *supra* note 1, Appendix A (*Table of Sources of the Civil Code of 1808*) (listing sources consulted/used).

provisions.⁶⁸ Despite uncovering considerable evidence of Moreau Lislet's preference for copying French-language materials, Batiza frequently looked to Roman and Spanish texts to explain articles with no apparent equivalent in the small number of French-language sources he had already consulted. As a result, Batiza ultimately traced hundreds of Digest articles to non-verbatim provisions in the *Siete Partidas*, *Curia Philipica*, and Febrero, as well as the *Corpus Juris Civilis*.⁶⁹ However, while Batiza's "verbatim" and "almost verbatim" French-language sources had been phraseologically identical or nearly-identical with language found in the Digest, and therefore provided verifiable evidence of direct borrowing, Batiza's proposed non-verbatim (especially Spanish and Roman) sources resembled the Digest at the level of conceptual similarity only (i.e., these sources addressed the same legal rules as the Digest provision in question but were distinct in terms of style and terminology).⁷⁰ Whether Moreau Lislet ever consulted or copied these sources is often a matter of speculation, and as the present study indicates, sometimes verifiably wrong.

B. The Pascal-Batiza Debate

What motivated Batiza to turn to non-verbatim Spanish and Roman sources where the French Code, projet, and Domat were silent? Ironically, the answer probably lies with the "Spanish thesis"⁷¹ of Batiza's principal antagonist, Robert Pascal. Prior to Batiza's 1971 study, Louisiana legal historians had offered several theories to

68. See Batiza 1971, *supra* note 1, at 10.

69. *Id.* at 12–13 (discussing 200+ Spanish source attributions).

70. *Id.* at 12 & n.48 (acknowledging that "the accuracy of some of the figures given in the text for these [non-verbatim] sources is not as precise as that of the French sources because of the difference in language and the number of instances where several possible sources may account for one single provision."). Although Batiza did identify several articles in Book III, Title V (on marriage contracts) that had been translated from Febrero. See BATIZA 1974, *supra* note 4, at 103 (identifying Febrero as "actual source" (in translation) of Articles 12–14).

71. For use of "Spanish thesis" to describe Pascal's position, see Palmer, *supra* note 32, at 1069.

explain Moreau Lislet and Brown's apparent deviation from their supposed mandate to make Spanish law the "ground work" of their "civil code."⁷² Proponents of the Spanish thesis, including Pascal, argued that the redactors used French-language sources such as the French Civil Code and Domat primarily out of convenience (as the Digest was to be compiled in the French language), but only where the French sources' rules were interchangeable with those of Spanish law. Where French and Spanish law differed, the redactors modified the French sources, used Spanish ones, or composed articles from scratch.⁷³ According to this theory, the Digest of 1808 is a metaphorical "Spanish girl in French dress"; although the redaction may be phraseologically French, the underlying legal institutions remain substantively Spanish.⁷⁴ Opponents of the Spanish thesis have increasingly disagreed with this characterization of the Digest as a French-language restatement of "Spanish-Roman law." In particular, John Cairns has argued persuasively that the drafters were "not constrained by a narrow positivist view of the sources they could employ" when drafting the Digest. Rather, after the manner of European codifiers, they used French-language and other sources more creatively, to intentionally modify Louisiana civil law.⁷⁵

72. For a contemporaneous overview of the "Pascal-Batiza" debate, see A.N. Yiannopoulos, *The Early Sources of Louisiana Law: Critical Appraisal of a Controversy*, in LOUISIANA'S LEGAL HERITAGE 102–03 (E.F. Haas ed., 1983). See also Vernon Valentine Palmer, *The Recent Discovery of Moreau Lislet's System of Omissions and Its Importance to the Debate over the Sources of the Digest of 1808*, 49 LOY. L. REV. 301, 302–07 (2003) (briefly reviewing controversy and need for more comparative research to resolve conflicting claims).

73. Robert Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 TUL. L. REV. 603, 606 (1971); see also LEVASSEUR, *supra* note 16, at 176–77 (articulating similar theory of redaction).

74. See Pascal, *supra* note 73, at 606; see also Robert Anthony Pascal, *Of the Civil Code and Us*, 59 LA. L. REV. 301, 303 (1998) (26th Tucker Lecture) (referring to Digest of 1808 as "Spanish girl in French dress").

75. See JOHN W. CAIRNS, *CODIFICATION, TRANSPLANTS, AND HISTORY: LAW REFORM IN LOUISIANA (1808) AND QUEBEC (1866)* xv, 77, 439 (2015); see also Olivier Moréteau, *Codification, Transplants and History: Law Reform in Louisiana (1808) and Quebec (1866)* (book review), 4 COMP. LEGAL HIST. 94 (2016) (positively reviewing Cairns' work and placing it within the history of Pascal-Batiza debate).

Notwithstanding his well-known insistence on the Digest of 1808's overwhelming French-language provenance, Batiza's own views were probably somewhere in the middle. Writing before Cairns, Batiza did not have the benefit of the former's demonstration (mostly based on evidence in Book I) of the redactors' use of French-language sources as vehicles for departing from previously-applicable Spanish paradigms.⁷⁶ Although Batiza acknowledged several provisions in the Digest where Moreau Lislet had supplemented Spanish rules with French ones,⁷⁷ he still assumed that the redactors followed Spanish law on most major points. In fact, in a 1982 article, Batiza offered an assessment of Moreau Lislet's likely approach to French and Spanish source material that is substantially compatible with the Spanish thesis' hypothesis that the drafters turned to Spanish authorities where the *Code civil*, Domat, and Pothier were inconsistent with existing Louisiana law:

The first Louisiana codification in 1808, disregarding the explicit instructions of the Legislature in a manner that can nevertheless be justified on technical grounds, drew upon French rather than Spanish or Castilian sources: the French Civil Code (1804), the *Projet* of the Year VIII (1800), the Custom of Paris, and the writings of Domat and Pothier. Only exceptionally, **where Spanish law differed substantially from the French**, did this first codification use sources such as the *Siete Partidas*, the *Recopilación de Castilla*, the *Fuero Real*, *Febrero Adicionado*, the *Curia Philipica*, and Roman Law.⁷⁸

Batiza's presumption that Moreau Lislet avoided adopting French rules that "differed substantially" from Spanish alternatives

76. See generally CAIRNS, *supra* note 75 (providing exhaustive comparative analysis of Book I's provisions on family relations and master and servant and rejecting both Pascal's hypothesis that Digest of 1808 is restatement of Spanish law as well as opposite characterization of the Digest as a "slavish copy" of the *Code civil*).

77. See, e.g., Batiza 1971, *supra* note 1, at 29 ("The Spanish system of community of acquets or gains (*sociedad de ganancias*) that appears in the Code, rather than being opposed to the French system of *communauté*, supplements it.").

78. See Batiza, *Modern Codification*, *supra* note 42, at 601 (emphasis supplied).

appears to have also influenced the methodology behind his 1971 study. At the very least, the Spanish thesis' characterization of the nature of the legislature's instructions decisively informed the Tulane law professor's strategy for finding the Digest's supposed non-verbatim sources.

C. Batiza's 1971 Methodology Reexamined: An Illustrative Excursus on the "Actual Sources" of Book III, Title XVII

Batiza's proposed "actual sources" for Book III, Title XVII (on Arbitration or Compromise) provide a useful illustration of how the 1971 study's flawed methodology led Batiza to over-estimate the importance of Spanish-language sources. Unlike most of Book III, Title XVII's rules on *compromis*, the French contract of arbitration,⁷⁹ have no equivalent in the *Code civil*: much to Planiol's annoyance, the French drafters had dealt with the subject of arbitration separately, in the French Code of Civil Procedure (1806).⁸⁰ For this reason, Moreau Lislet could not borrow provisions from the *Code civil* or the projet when drafting Title XVII's thirty-five articles, as he had done elsewhere in Book III. Moreover, although Batiza's 1971 study identified ten articles that Moreau Lislet had copied directly from Domat's *Loix Civiles*, these accounted for less than a third of Title XVII's provisions.⁸¹ Faced with a dearth of verbatim source material in the "usual places" (*Code civil*, projet, Domat), Batiza characteristically turned his search for Title XVII's

79. The usage in the Digest is distinct from that of the 1825 and subsequent civil codes, as well as current Louisiana practice, in which *compromise* is a supposedly civilian translation of a settlement agreement, or "transaction." See, e.g., N. Stephan Kinsella, *A Civil Law to Common Law Dictionary*, 54 LA. L. REV. 1265, 1297 (1994) (equating "transaction or compromise" with "settlement of a lawsuit"). In the Digest, it is always a contract to arbitrate.

80. See CODE DE PROCÉDURE CIVILE [C.P.C.] [Code of Civil Procedure] arts. 1005–1013 (1806) (Fr.); see also 2 MARCEL PLANIOL, TREATISE ON THE CIVIL LAW 324 (La. State L. Inst. trans., 11th ed. 1939) (stating that "[a]rbitration is a very important contract which is not regulated by our civil laws; it is only incidentally envisaged in Art. 1989 of the Civil Code and regulated by a few insufficient dispositions of the code of procedure. . .").

81. See Batiza 1971, *supra* note 1, at 122–25 (tracing Title XVII Articles 1, 9–10, 14, 26–28, 34, and parts of Articles 4 and 29 to Domat's *Loix Civiles*).

remaining provisions to plausible Spanish-language alternatives, ultimately attributing most of the title's non-Domat material to the possible influence of non-verbatim, conceptually-relevant provisions in the *Tercera Partida*, Febrero, and *Curia Philipica*.⁸² Indeed, Batiza traced nearly all of the 1971 study's proposed *Curia Philipica* source material to Title XVII alone.⁸³ According to Batiza's study, Title XVII was, in quantitative terms, the most "Spanish" or "Spanish-influenced" title in the entire Digest.⁸⁴

In retrospect, however, such a high proportion of Spanish source material almost certainly reflects Batiza's approach, not the redactor's. The Appendix reveals that at least six of Title XVII's twenty-five non-Domat articles were actually taken from the *Encyclopédie méthodique* (all or parts of Articles 3 and 4, 12, 24–25, and 33),⁸⁵ not Pothier, the *Tercera Partida*, Febrero, and/or *Curia Philipica* (as Batiza had proposed),⁸⁶ while Article 6 was copied from the *Loix Civiles* (not *Curia Philipica*),⁸⁷ and Article 8 was taken from Denisart.⁸⁸ Likewise, Batiza's 1971 attribution of Article 7's three-month default term for compromises to the non-verbatim influence

82. See *id.* (attributing Articles 3, 5–7, 11–13, 15–18, 21–22, and 25 to non-verbatim "substantially" or "partially influential" provisions in the *Partidas*, Febrero, and/or *Curia Philipica*).

83. Apart from Title XVII (17 provisions), Batiza found possible influences of *Curia Philipica* only in Book III, Titles III (1 provision) and XVI (1 provision). See *id.* at Appendix B.

84. That is to say, the proportion of Title XVII's articles that Batiza attributed to the non-verbatim influence of Spanish, and only Spanish, sources is higher than that of any other title in the Digest. See *id.*

85. See 3 *Encyc. Juris*. 113, ¶¶ 4, 9, 16 (sources for first two clauses in Title XVII, Article 3, second clause of Article 4, first part of Article 33); 1 *Encyc. Juris*. 409, ¶¶ 5–6 (sources for part of Article 12 and all of Articles 24–25).

86. See Batiza 1971, *supra* note 1, at 122–25 (attributing Article 3 to *Febrero Adicionado/Curia Philipica*, Article 12 to *Tercera Partida, Febrero Adicionado and/or Curia Philipica*, Article 24 to Pothier on *Procédure Civile/Curia Philipica*, Article 25 to *Curia Philipica*, and Article 33 to Pothier, *Febrero Adicionado and/or Curia Philipica*).

87. In the 1971 study, Batiza wrongly traced Article 6 to the "substantial influence" of both the *Loix Civiles* and *Curia Philipica*. See Batiza 1971, *supra* note 1, at 123. In the 1974 study, Batiza revised his earlier source attribution to include only Domat, the article's "almost verbatim" source. See 3 BATIZA 1974, *supra* note 4, at 113.

88. See 1 ANCIEN DENISART 490, ¶ 50 (8th ed. 1773) ('*Compromis*') (near-verbatim source for Article 8).

of Domat, Febrero, and/or *Curia Philipica* is unsupportable.⁸⁹ In the *Loix Civiles*, Domat assumes that a compromise without a fixed deadline is invalid; in the Spanish sources (including both *Curia Philipica* and Febrero), arbitrators have three years, not three months, to render an award.⁹⁰ Instead, the “actual source” for Article 7 is very likely Article 1007 in the recently-promulgated French Code of Civil Procedure, which states that “*Le compromis sera valable, encore qu’il ne fixe pas de delai; et, en ce cas, la mission des arbitres ne durera que trois mois, du jour du compromis.*”⁹¹

In other words, once Domat, Lerasle, Denisart, and the French code of procedure are taken into account, the probable “Spanish-

89. See Dig. Orl., Bk. III, Tit. XVII, Art. 7 (“If the compromise does not limit any time, the power of the arbitrators may continue in force during three months from the date of the compromise unless the parties agree to revoke it.”); Batiza 1971, *supra* note 1, at 123 (identifying Domat, Febrero, *Curia Philipica* as Article 7’s “substantially influential” sources).

90. The rule in Domat: “It is usual, and even necessary, in Compromises, to fix a time within which the Arbitrators shall pronounce their Award . . . because it would not be just that it should be in the power either of the Arbitrators, or Parties, to put off the Final Decision for ever.” 1 JEAN DOMAT, THE CIVIL LAW IN ITS NATURAL ORDER 224 (W. Strahan trans., 1722). The Spanish sources: “[I]f the parties had fixed no time at which the judgment was to be rendered; then we say the arbitrators ought to render it, as soon as possible; so that not more than three years shall elapse. . . .” 1 THE LAWS OF LAS SIETE PARTIDAS 98–99 (L. Moreau Lislet & Henry Carleton trans., 1820) (reproducing 3 Part. Tit. IV *ley* 27); see also Cur. Phil., *supra* note 58 (repeating same three-year rule); JOSÉ FEBRERO, LIBRERÍA DE ESCRIBANOS Part. I, Cap. XIII, § 1, *num.* 10 (1789) (same); ESCRICHE, *supra* note 58, at 527 (three-year default rule unchanged in middle of nineteenth century).

91. CODE DE PROCÉDURE CIVILE [C.P.C.] [Code of Civil Procedure] art. 1007 (1806) (Fr.). The French Code of Procedure’s three-month rule appears to be novel. Most *ancien droit* authorities state that a *compromis* without a stated deadline was not valid (following Domat) or at least revocable. See, e.g., ROBERT JOSEPH POTHIER, TRAITÉ DE PROCÉDURE CIVILE (1776), Part. II, Ch. IV, Art. II, ¶ 1 (listing deadline as required term for valid compromise); GUY DU ROUSSEAUD DE LA COMBE, RECUEIL DE JURISPRUDENCE CIVILE 24 (4th ed., 1746) (declaring compromise without a term revocable). On the other hand, the Toulouse advocate Marc-Antoine Rodier acknowledged several minority opinions: “*d’autres qu’ils doivent prononcer le même jour; . . . d’autres enfin soutiennent qu’ils peuvent prononcer jusqu’à révocation du compromis, ou du moins dans les trois ans de la date du compromis,*” while Mongalvy states in his *Traité de l’arbitrage* (1837) that some *ancien droit* authors had held that compromises could last up to 30 years in certain circumstances. See MARC-ANTOINE RODIER, QUESTIONS SUR L’ORDONNANCE DE LOUIS XIV Tit. XXVI, Art. VIII, *question* 3 (1769); S.C.T. MONGALVY, TRAITÉ DE L’ARBITRAGE EN MATIÈRE CIVILE ET COMMERCIALE 162 (1837).

ness” of Title XVII’s non-verbatim source material is significantly reduced, while almost half of the Digest’s proposed *Curia Philipica* source material is rendered hypothetical at best. This does not mean that the redactor did not consult Spanish sources when drafting Title XVII’s articles (it is entirely possible that he did). However, in most instances, the French legal literature Moreau Lislet found in his own law library would have been sufficient for his work. Moreover, at least with respect to Article 7’s three-month default term and Article 24’s presumption against amicable composition, Spanish sources were clearly *not* “substantially” influential.⁹² More than the drafter’s preference for the style of the *Code Napoléon* or the convenience of the new French Code as a model is needed to explain Moreau Lislet’s repeated reliance on contradictory French source material in an area of private law where Spanish law had a well-developed, preexisting body of legal rules.

D. The “Spanish Thesis” Re-re-examined

While Batiza’s purported Spanish source attributions (both in Title XVII and elsewhere in the Digest) were quantitatively insignificant relative to Moreau Lislet’s extensive borrowing from the French Code, projet, and Domat, their scattered presence throughout Batiza’s reconstruction of the Digest’s source material has nevertheless created the impression that there is indeed a “Spanish-Roman” substrate to the Digest, often without supporting comparative evidence. Inadvertently or not, Batiza’s findings have therefore helped sustain the Spanish thesis’ central premise that the drafters worked (or believed that they were working) on an Iberian canvas to paint the “girl in French dress.” The mistaken attribution of French legal encyclopedia-derived articles to non-verbatim Spanish sources no doubt also explains Batiza’s otherwise curious conclusion that the

92. See *supra* note 58 (discussing French background to Article 24 and contrary rules in Spanish sources).

redactor's use of "Spanish law . . . gives the Code a somewhat didactic character."⁹³

At present, further research is needed to ascertain the full extent of French-language source material in the Digest of 1808. There are likely French-language verbatim sources that Moreau Lislet copied but which have not yet been identified (such as law dictionaries), and there are also missing verbatim source attributions for French-language materials that Batiza did consult.⁹⁴ Until scholars have identified and exhaustively searched all of the Digest's French-language sources for verbatim source material, Batiza's non-verbatim attributions to Spanish sources should, except where comparative evidence supports them,⁹⁵ be treated with caution. In the meantime, it is safe to assume that, because the Digest was originally written in French, not Spanish, future discoveries of overlooked verbatim source material will come disproportionately at the expense of Batiza's non-verbatim attributions to Spanish-language materials.

VI. CONCLUSIONS: THE PEDAGOGICAL ARCHITECTURE OF LOUISIANA'S CIVIL CODES

As earlier sections have indicated, the supposed "cosmopolitanism" of the Digest's source material has probably been over-emphasized.⁹⁶ While Moreau Lislet's work was necessarily comparative, he generally preferred to copy French-language texts whenever

93. See Batiza 1971, *supra* note 1, at 28.

94. For example, the "actual source" for Bk. I, Tit. IX, Art. 15 is likely the "almost verbatim" equivalent Article 503 in the *Code Napoléon*. In contrast, Batiza's 1971 study proposed "substantially influential" provisions in Pothier's treatise on *Personnes* and Blackstone's *Commentaries*. Cf. Batiza 1971, *supra* note 1, at 62.

95. *E.g.*, with respect to ganancial property or the law of successions.

96. See, *e.g.*, Batiza 1971, *supra* note 1, at 28 (claiming that "the variety of sources used in drafting the Code gives it a cosmopolitan and distinctive flavor that differentiates it from either of its two principal models [the *Projet* and the *Code Napoléon*]."); see also Vernon Valentine Palmer, *Sounding the Retreat: The Exit of Spanish Law in Early Louisiana 1805-1808*, 31 TUL. EUR. & CIV. L.F. 121, 146 (2017) (stating of the 1971 study that "Batiza's research showed too that the drafters drew upon English, French, and Spanish writers such as Blackstone, Domat, Febrero, and Pothier. Clearly this was a cosmopolitan selection from across national legal systems.").

possible. The redactor had thousands of articles to draft, and time was of the essence. The immediate need for efficiency suggests that he relied on a relatively small number of French-language materials rather than exhaustively research all the extant Spanish legislation or translate a substantial portion of it.⁹⁷ As Batiza's 1971 study established, the *Code civil*, the *projet*, and Domat's *Loix Civiles* were Moreau Lislet's most important sources. All three texts provided useful civilian models of structure and French-language phraseology, while Domat had the added advantage of being both explicitly sanctioned by the legislature and widely available in a popular English translation.⁹⁸

In contrast, French legal encyclopedia entries supplemented the principal sources. Moreau Lislet had used Lerasle, Denisart, and Guyot in everyday legal practice, and he was therefore familiar with their strengths and weaknesses. During the drafting process, these sources would have facilitated easy comparison of definitions and rules penned by reputable French authorities. Moreau Lislet may also have resorted to these sources to improve his own understanding of unfamiliar provisions in the *Code Napoléon*, itself a novel compromise between Roman law and *ancien droit*.⁹⁹ Knowing that fellow practitioners and ordinary citizens would require the same

97. This is hardly surprising given the state of Spanish law at the time of the Digest's redaction. According to John Tucker, the various Spanish codes, *fueros*, and *ordenanzas* in force "constituted a tremendous volume of legislation applicable to Louisiana," collectively "compris[ing] 23 volumes of 89 books of 1,543 titles containing 20,335 laws." See John Tucker, *Code and the Common Law in Louisiana*, 29 TUL. L. REV. 739, 743 (1955) (relying on GUSTAVUS SCHMIDT, *THE CIVIL LAW OF SPAIN AND MEXICO* 102 (1851)).

98. See Levasseur, *supra* note 28, at 620 & n.9 (for text of 1806 "declaratory act" making *Loix Civiles* authoritative in Louisiana courts). The first English translation of Domat was Strahan's 1722 edition. See DOMAT, *supra* note 90; see also Peter Stein, *The Attraction of the Civil Law in Post-Revolutionary America*, 52 VA. L. REV. 403, 406–07 (1966) (discussing popularity of Strahan's translation in common-law jurisdictions during early 19th century).

99. See, e.g., Bergel, *Principles*, *supra* note 56, at 1078 (describing the *Code civil* as a "technical compromise between customary law and Roman law.").

elucidation likely prompted him to copy material from Guyot, Denisart, and Lerasle directly into the Digest.¹⁰⁰

There were also important legal-cultural reasons for supplementing the French Code and Domat with other genres of civilian legal literature: the finished Digest was to be applied not only by civilians, but also by lawyers trained in the common law. Between 1804 and 1810, Louisiana's judges were mostly American immigrants,¹⁰¹ and, if the Creole legislators' *Manifesto of 1806* is to be credited, some knew neither Spanish nor French.¹⁰² Moreover, in the period immediately after the Purchase, lawyers from common-law states quickly outnumbered Francophone advocates, bringing with them divergent legal vocabularies and methodologies.¹⁰³ In this environment, the civilian approach to gap-filling could hardly be assumed, and lacunae in the new code would inevitably be cause of future confusion or even intentional misinterpretation. The

100. On this point, see Barenot, *infra* note 111, at 16 (stating that "With the advent of the Revolution and in the years that followed the promulgation of the Civil Code, the main purpose of lexicographical works [both dictionaries and *répertoires*] was to facilitate the passage from the ancien droit to legal ecosystems constructed on new paradigms.").

In fact, the practice of using French encyclopedia entries to interpret the Digest was not unheard of in the years after the Louisiana Code's promulgation. *See, e.g.*, *Morse v. Williamson & Patton's Syndics*, 3 Mart. (o.s.) 282, 284 (La. 1814) (Court referred to *Encyclopédie méthodique* to interpret legal term in Digest); *Amory v. Boyd*, 5 Mart. (o.s.) 414, 415 (La. 1818) (Derbigny, J quoting Guyot's *répertoire* on subject of mandate). Sometimes legal argument rested on competing entries from two French legal encyclopedias. *See, e.g.*, *De Armas*, *supra* note 19, at 140 (Moreau Lislet invoking *Nouveau Denisart* to undermine plaintiff's reliance on Guyot's *répertoire*).

101. *See, e.g.*, Henry P. Dart, *The History of the Supreme Court of Louisiana*, 133 La. liii (1913).

102. See quoted language in LEVASSEUR, *supra* note 16, at 63: "The present composition of the courts, the judges presiding over them and the jurists who plead before **them being almost all strangers to the French language** and still more to the language in which the greater part of the laws of this country are written [i.e., Spanish] . . . renders indispensable . . . in the French and the English language, a complete collection of the laws governing us." (emphasis supplied).

103. Elizabeth Gaspard, *The Rise of the Louisiana Bar: The Early Period, 1813-1839*, 28 LA. HIST. 183, 187 (1987) (discussing immigration of Anglo-American lawyers into Louisiana during early statehood period).

occasional encyclopedist definition or gloss would help mitigate this possibility.¹⁰⁴

In 1936, Mitchell Franklin famously stated that the difference in length between the Louisiana Code and the *Code civil* was largely the difference between a “code that was a code, and a code that was a code, a law-school and doctrine all at once.”¹⁰⁵ Over the years, Louisiana legal scholars have frequently agreed with Franklin’s assessment, although they typically express dissatisfaction with the code’s dual orientation.¹⁰⁶ As David Hoskins and Shael Herman explain, “almost by reflex, civilians shy away from the suggestion that the code performs legitimate pedagogical functions. . . . The code is *legislation*, not doctrine, not a text-book of the civil law.”¹⁰⁷ However, while Franklin’s (and later scholars’) juxtapositions of “code” and “doctrine” are no doubt descriptively accurate with respect to the Digest’s (and its successors’) unusual style, they are also too anachronistic. At the time of the Digest’s redaction, the paradigmatic status of the *Code Napoléon*, and mid-nineteenth century French law’s categorical distinction between the role of legislation, jurisprudence, and commentary in shaping legal norms, was still in

104. For similar insights on the relationship between the Digest’s pedagogical style and the common law threat, see Palmer, *supra* note 32, at 1076 (concluding that the “framers felt it was necessary to incorporate a good deal of doctrine within the code itself. The judges to whom these instructions issued were all trained in the common law and would have brought with them a completely different methodological inclination.”).

105. See Mitchell Franklin, *Some Observations on the Influence of French Law on the Early Civil Codes of Louisiana*, in LE DROIT CIVIL FRANÇAIS : LIVRE-SOUVENIR DES JOURNÉES DU DROIT CIVIL FRANÇAIS 841 (1936) (quoted in Shael Herman & David Hoskins, *Perspectives on Code Structure: Historical Experience, Modern Formats, and Policy Considerations*, 54 TUL. L. REV. 987, 1042 (1980)).

106. See, e.g., Justice Rost’s comments in *Egerton v. Third Municipality of New Orleans*, 1 La. Ann. 435, 437 (1846) (“Definitions are, at best, unsafe guides in the administration of justice; and their frequent recurrence in the Louisiana Code, is the greatest defect in that body of laws.”); see also THOMAS E. CARBONNEAU, DAVID A. COMBE, AND SHAE HERMAN, THE LOUISIANA CIVIL CODE: A HUMANISTIC APPRAISAL 202 (1981) (criticizing code as “much more verbose” than French prototype and lamenting drafters’ decision to “make of the Civil Code a pedagogical tool by incorporating long passages from venerable treatises.”).

107. Herman & Hoskins, *supra* note 105, at 1041.

the making.¹⁰⁸ As Jean Maillet observed elsewhere, it was the process of codification itself that first “pushed into the background other legal sources and techniques,” substituting an almost “entirely statutory” conception of law for earlier models.¹⁰⁹ Having been trained in the *ancien droit*, Moreau Lislet’s practical experience with French legislation was not the “self-sufficient” civil code of common law stereotype¹¹⁰ or the French Exegetical School, but the earlier period’s patchwork of *ordonnances* and jurisprudence, elucidated by myriad commentaries, legal encyclopedias, and works of legal lexicography (the earlier “sources and techniques” described by Maillet). The varied nature of the sources Moreau Lislet used to redact the Digest naturally reflects this unique historical context, when French legal culture was on the cusp of a crucial transformation in its own understanding of codified legislation’s relationship to other forms of legal literature.

From Moreau Lislet’s point of view, extracts from the *Encyclopédie méthodique*, *Décisions nouvelles*, and *Répertoire de jurisprudence* are therefore not awkward additions to Louisiana’s first civil code, ornamenting (or adulterating) a “pure” civilian codification. Rather, legal encyclopedias and French-style civil codes should be understood as existing along an evolving continuum between old

108. See ANDRÉ CASTALDO Y YVES MAUSEN, INTRODUCTION HISTORIQUE AU DROIT §§ 1918 to 1920 (5th ed., 2019) (“*Désireux d’expliquer (et de s’expliquer sans doute à soi-même) le Code Napoléon, les premiers commentateurs ne se satisfont pas d’une simple paraphrase du texte; ce n’est que plus tard, au cours du XIXe siècle, que l’expression d’«exégèse» prendra tout son sens à cet égard.*”) (contrasting post-codification renaissance in doctrinal analysis and continuity of *ancien droit* methodologies of interpretation with mid-century French law’s retreat to pure exegesis); see also James Gordley, *Myths of the French Civil Code*, 42 AM. J. COMP. L. 459, 491–92 (1994) (suggesting that mid-19th century French Exegetical School responsible for the “myth” of the French Civil Code’s self-sufficiency and independence vis-à-vis natural law and doctrine).

109. See Jean Maillet, *Historical Significance of French Codification*, 44 TUL. L. REV. 681, 688–89 (1970) (discussing methodological changes wrought by codification); see also Pierre Legrand, *Strange Power of Words: Codification Situated*, 9 TUL. EUR. & CIV. L.F. 1, 28–29 (1994) (agreeing that codification “simultaneously serves to close the past and open the future,” substituting new genres or approaches to interpretation for older ones).

110. See also Aniceto Masferrer, *French Codification and “Codiphobia” in Common Law Traditions*, 34 TUL. EUR. & CIV. L.F. 1, 20–21 (2019).

and new models of making civil law comprehensible, with Moreau Lislet's final redaction falling somewhere in the middle. Indeed, Pierre-Nicolas Barenot has recently proposed that the *ancien droit* "legal dictionaries, lexicons or repertoires" popular among French lawyers of Moreau Lislet's generation should be regarded as eighteenth-century antecedents of modern codification, "for codes, like lexicographical works, aim at making the law more accessible, by bringing together and organizing separate legal texts in a single corpus."¹¹¹

According to the cultural historian Robert Darnton, Denis Diderot's original *Encyclopédie* had been offered to the French reading public as a "compendium of all knowledge", an Enlightenment cornucopia of abstract as well as technical information about a wide range of important subjects.¹¹² In similar vein, the *Avertissement* to Lerasle's volumes claimed with justification that the *Encyclopédie méthodique: Jurisprudence* would provide its readers with *un système complet du Droit* in eight volumes.¹¹³ Although modern civil codes do not typically aspire to the same didactic achievement as legal encyclopedias, they nevertheless share a similar concern with comprehending the whole landscape of private law in a systematic arrangement.¹¹⁴

In the end, by blending codified legislation and *ancien droit* commentary with French legal encyclopedia entries, Moreau Lislet was able to compile a hybrid Digest-Code which was both legislative and didactic, one specially designed to meet the immediate legal-cultural needs of an emerging mixed system.¹¹⁵ Perhaps as a

111. See Pierre-Nicolas Barenot, *A View of French Legal Lexicography – Tradition and Change from a Doctrinal Genre to the Modern Era*, in LEGAL LEXICOGRAPHY: A COMPARATIVE PERSPECTIVE 13–14 (Máirtín Mac Aodha ed. 2014).

112. See Darnton, *supra* note 22, at 1352.

113. See *Avertissement*, *supra* note 21, at vi.

114. See, e.g., James Gordley, *Codification and Legal Scholarship*, 31 U.C. DAVIS L. REV. 735, 735 ("Modern civil codes . . . are attempts to state the basic rules of private law comprehensively and systematically.").

115. See generally Michael McAuley, *The Pedagogical Code*, 63 LA. L. REV. 1293, 1297 (2003) (discussing the mixed legislative-pedagogical orientation of the Louisiana Civil Code).

result, the Digest of 1808's *sui generis* style and eclectic French-language source material display a striking affinity for (and continuity with) the *ancien droit* models it supposedly supersedes, even as its structure and rules resemble its better-known Napoleonic prototype.¹¹⁶ At the very least, the redactor's choice of sources with respect to the genre of French legal literature he consulted (and copied) provides a valuable window into the complex aspirations behind the pedagogical architecture of Louisiana's encyclopedist code.

APPENDIX

The Appendix is a list of source attributions for encyclopedia-derived articles appearing in Louisiana's first civil code, the Digest of 1808. The Appendix is intended to be used as a supplement to *Appendix C* in Rodolfo Batiza's 1971 study, "The Louisiana Civil Code of 1808: Its Actual Sources and Present Relevance," published in volume 46 of the *Tulane Law Review*. For utility of comparison, this Appendix uses Batiza's 1971 study's categories of phraseological "resemblance" to describe the relationship between individual Digest provisions and French legal encyclopedic sources (e.g., "verbatim", "almost verbatim", "almost verbatim (in part)", etc., usually abbreviated "v.", "a.v.", and "a.v. (in part)"). The present study has adopted Batiza's categories primarily for reasons of consistency, despite the inherent subjectivity of Batiza's earlier approach.

116. In this last respect, the Louisiana drafter's approach to codification resembles that of some Latin American codifiers later in the same century, who also felt that the laconic *Code civil*, though admirable for its structure, nevertheless required a return to earlier models for supplementation. See, e.g., M.C. Mirow, *Individual Experience in Legal Change: Exploring a Neglected Factor in Nineteenth-Century Latin American Codification*, 11 SW. J.L. & TRADE IN THE AMERICAS 301, 311 (2005) ("Finally, concerning the style of drafting of [the Chilean Civil Code], [Andrés] Bello noted that he sacrificed brevity (which he equated with the French code) to include examples and illustrations, a style that in his view was more like the method of the *Siete Partidas*." (quoting 12 ANDRÉS BELLO, OBRAS COMPLETAS DE ANDRÉS BELLO 21 (1954))).

The following sources were consulted in preparing the Appendix:

1. M. Lerasle, *Encyclopédie méthodique : Jurisprudence* (8 vols., 1782–89) (= “Encyc. Juris.”)
2. Jean-Baptiste Denisart, *Collection de décisions nouvelles* (vol. 1 = 8th ed., 4 vols., 1773; vols. 2-4 = 9th ed., 4 vols., 1775) (= “Denisart”)
3. Jean-Baptiste Denisart, *Collection de décisions nouvelles* (Calenge ed., 13 vols., 1783–1807) (= “Nouveau Denisart”)
4. Joseph-Nicolas Guyot, *Répertoire universel et raisonné de jurisprudence civile, criminelle, canonique et bénéficiale* (2d ed., 17 vols., 1784–85) (= “Guyot’s Répertoire”)
5. Denis Diderot & Jean le Rond d’Alembert, *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers* (1st ed., 28 vols., 1751–66) (= “Did. Encyc.”)

A FINAL NOTE

Not infrequently, encyclopedia entries found in Lerasle, Denisart, and Guyot resemble one another, often verbatim, making it difficult to know exactly which entry Moreau Lislet copied. Verbatim similarity in multiple encyclopedias is due to rampant borrowing between *ancien droit* legal lexicographers during the relevant period, as well as mutual dependence on shared sources from the middle of the 18th-century (especially Diderot’s first *Encyclopédie*). In these difficult cases, a “best guess” has been made on the basis of other evidence (often paragraph structure or sequence). Regardless, in all of these cases, the Digest appears to follow language taken from French legal encyclopedic literature rather than non-verbatim sources or Spanish law.

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
Book II, Title I (Of things or estates)					
Article 1	2 Encyc. Juris. 43, ¶ 1 in 'Biens'	a.v.	<i>Institutes of Gaius</i> , Justinian's <i>Institutes</i> (p. 62 in Tulane Law Review article)	Guyot's <i>Répertoire</i> (vol. 3 in <i>Sources</i> 1974, p. 38)	"p.i." (<i>Institutes</i>); "a.v. (in part)" (Guyot)
Article 2	2 Encyc. Juris. 620, ¶ 5 in 'Chose'; see also Boucher d'Argis on 'Choses' in 3 Did. Encyc. 374, ¶ 6 (a.v.)	v.	Justinian's <i>Institutes, Digest, Tercera Partida</i> (p. 62)	1971 sources and Guyot's <i>Répertoire</i> (vol. 3, p. 38)	"s.i."
Article 3	2 Encyc. Juris. 620, ¶ 9 in 'Chose'; see also Boucher d'Argis on 'Choses' in 3 Did. Encyc. 374, ¶ 7 (a.v.)	v.	Domat's <i>Loix Civiles</i> , Justinian's <i>Institutes, Digest, Tercera Partida</i> (p. 62)		"s.i."
Article 5	2 Encyc. Juris. 620, ¶ 11 in 'Chose'	a.v. (in part)	Justinian's <i>Institutes, Tercera Partida</i> (p. 62)	1971 sources and <i>Curia Philipica, Digest</i> (vol. 3, p. 39)	"s.i."
Article 6	2 Encyc. Juris. 621, ¶¶ 27, 29 in 'Chose'	a.v. (in part)	Domat's <i>Loix Civiles</i> , Justinian's <i>Institutes, Tercera Partida</i> (p. 62)		"s.i."
Article 10	2 Encyc. Juris. 620, ¶ 5 in 'Chose'	a.v. (in part)	Domat's <i>Loix Civiles, Institutes of Gaius</i> (p. 63)	Guyot's <i>Répertoire</i> (vol. 3, p. 41)	"s.i."
Article 11	2 Encyc. Juris. 620, ¶ 6 in 'Chose'; see also Boucher d'Argis on 'Choses' in 3 Did. Encyc. 375, ¶ 11 (a.v. in part)	v.	Domat's <i>Loix Civiles</i> , Pothier on <i>Choses, Institutes of Gaius</i> (p. 63)	1971 sources and <i>Digest</i> (vol. 3, p. 41)	"s.i."

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
Article 12	2 Encyc. Juris. 620, ¶ 7 in 'Chose'	s.i.	Pothier on <i>Choses</i> (p. 63)	1971 sources and Guyot's <i>Répertoire, Segunda Partida</i> (vol. 3, p. 41)	"s.i."
Article 13	2 Encyc. Juris. 620, ¶ 7 in 'Chose'	a.v. (first par.)	Pothier on <i>Choses</i> (p. 63)	1971 sources and French Civil Code, French projet, Domat's <i>Loix Civiles</i> , Guyot's <i>Répertoire</i> (vol. 3, p. 41)	"s.i. (first part)" (Pothier); "s.i." (sources in 1974 study)
Book II, Title III (Of usufruct, use and habitation)					
Article 1	4 Denisart 665, num. 1 (' <i>Usu-fruit</i> ')	a.v. (first par.)	French projet, French Civil Code, Domat's <i>Loix Civiles</i> , Justinian's <i>Institutes</i> , <i>Digest</i> (p. 65)	Guyot's <i>Répertoire</i> (vol. 3, p. 42)	"s.i." (1971 sources); "a.v. (in part)" (Guyot)
Article 2	4 Denisart 665, num. 2 (' <i>Usu-fruit</i> ')	a.v.	Domat's <i>Loix Civiles</i> (p. 65)	1971 sources and Pothier on <i>Douaire</i> (vol. 3, p. 42)	"s.i."
Article 3	4 Denisart 665, num. 5 (' <i>Usu-fruit</i> ')	a.v.	French projet, French Civil Code, Domat's <i>Loix Civiles</i> , Justinian's <i>Institutes</i> , <i>Digest</i> (p. 65)	1971 sources and <i>Febrero Adicionado</i> (vol. 3, p. 42)	"s.i."
Article 4	4 Denisart 665, num. 6 (' <i>Usu-fruit</i> ')	v. (first par.)	Domat's <i>Loix Civiles</i> (p. 65)	1971 sources and Guyot's <i>Répertoire, Febrero Adicionado</i> (vol. 3, p. 42)	"s.i."

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
Article 14	8 Encyc. Juris. 161, § IV, ¶ 12 in ' <i>Usufruit</i> '	v.	<i>Digest, Tercera Partida</i> (p. 65)	Pothier on <i>Douaire, Febrero Adicionado</i> (vol. 3, p. 43)	"s.i."
Article 18	4 Denisart 666, num. 17 (' <i>Usufruit</i> ')	a.v.	Digest (p. 65)		"s.i."
Article 27	Domat's <i>Loix Civiles</i> (first par.); 8 Encyc. Juris. 159, § II, ¶ 11 in ' <i>Usufruit</i> ' (second par.)	a.v. (both pars.)	Domat's <i>Loix Civiles</i> (p. 66)		"a.v. (first par.)"
Article 45	8 Encyc. Juris. 160, § III, ¶ 1 in ' <i>Usufruit</i> ' or possibly 17 Guyot 396, § III, ¶ 1 (first part); French Civil Code, article 599 (second part)	a.v. (both parts)	French Civil Code, Domat's <i>Loix Civiles</i> (p. 66)	French Civil Code, article 599 (second part) (vol. 1, p. 45); first part unidentified	"a.v. (in part)"
Article 47	8 Encyc. Juris. 160, § III, ¶ 3 in ' <i>Usufruit</i> ' or possibly 17 Guyot 396, § III, ¶ 5	a.v.	Domat's <i>Loix Civiles</i> (p. 66)		"p.i."
Article 50	8 Encyc. Juris. 160, § III, ¶ 8 in ' <i>Usufruit</i> ' or possibly 17 Guyot 396, § III, ¶ 10	v.	French Civil Code (p. 67)		"p.i."
Article 59	8 Encyc. Juris. 163, § V.III, ¶ 1 in ' <i>Usufruit</i> '	a.v. (in part)	French projet, French Civil Code (p. 67)		"s.i."
Article 60	4 Denisart 668, num. 35 (' <i>Usufruit</i> ')	a.v. (first part)	French projet, French Civil Code (p. 67)	1971 sources, <i>Febrero Adicionado</i> , and <i>Tercera Partida</i> (vol. 3, p. 46)	"s.i."
Book II, Title IV (Of pre-dial services or services of land)					

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
Article 18	8 Encyc. Juris. 286–87, § VI, ¶ 1 in 'Voisinage'	a.v. (first part)	French projet, French Civil Code, <i>Digest, Tercera Partida</i> (p. 69)		"s.i."
Article 19	8 Encyc. Juris. 287, § VI, ¶ 1 in 'Voisinage'	a.v. (first part); a.v. (in part) (second part)	Domat's <i>Loix Civiles</i> (p. 69)	1971 sources and <i>Tercera Partida</i> , Guyot's <i>Répertoire</i> (vol. 3, p. 48)	"s.i." (Domat); "a.v. (in part)" (Guyot)
Book III, Title I (Of successions)					
Article 157	6 Encyc. Juris. 475, ¶ 1 in 'Partage'; see also Boucher d'Argis on 'Partage' in 12 Did. Encyc. 85, ¶ 1 (a.v.)	a.v.	Domat's <i>Loix Civiles</i> , Pothier on <i>Successions</i> (p. 79)	1971 sources, <i>Sexta Partida</i> , and Guyot's <i>Répertoire</i> (vol. 3, p. 73)	"s.i."
Article 158	6 Encyc. Juris. 475, ¶¶ 13–14 in 'Partage'; see also Boucher d'Argis on 'Partage' in 12 Did. Encyc. 85, ¶¶ 23–24 (a.v.)	v.	Pothier on <i>Successions</i> (p. 79)		"p.i."
Article 162	3 Denisart 458, num. 8 ('Partage')	a.v. (first par.)	French projet, French Civil Code, Domat's <i>Loix Civiles</i> , Pothier on <i>Successions</i> (p. 80)	1971 sources and <i>Febrero Adicionado</i> (vol. 3, p. 73)	"s.i."
Article 165	6 Encyc. Juris. 475, ¶¶ 5–6 in 'Partage'; see also Boucher d'Argis on 'Partage' in 12 Did. Encyc. 85, ¶¶ 5–6 (v.)	v.	Pothier on <i>Successions</i> (p. 80)		"s.i."
Article 171	6 Encyc. Juris. 475, ¶ 4 in 'Partage'; see also Boucher	a.v.	French projet, French Civil Code, Domat's	1971 sources and <i>Febrero Adicionado</i> , <i>Sexta</i>	"s.i."

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
	d'Argis on 'Partage' in 12 Did. Encyc. 85, ¶ 4 (a.v.)		<i>Loix Civiles</i> , Pothier on <i>Successions</i> (p. 80)	<i>Partida, Fuero Real</i> (vol. 3, p. 74)	
Article 172	5 Encyc. Juris. 493, ¶ 1 in 'Licitation'; see also Boucher d'Argis on 'Licitation' in 9 Did. Encyc. 485, ¶ 1 (v.)	v.	Pothier on <i>Successions</i> (p. 80)	Guyot's <i>Répertoire</i> (vol. 3, p. 75)	"s.i." (Pothier); "a.v. (in part)" (Guyot)
Article 173	5 Encyc. Juris. 493, ¶¶ 7–8 in 'Licitation'; see also Boucher d'Argis on 'Licitation' in 9 Did. Encyc. 485, ¶¶ 7–8 (v.) (first par.)	v. (first par.); a.v. (second par.)	Domat's <i>Loix Civiles</i> , Pothier on <i>Successions</i> (p. 80)	Guyot's <i>Répertoire</i> (vol. 3, p. 75)	"p.i." (1971 sources); "a.v. (in part)" (Guyot)
Article 174	5 Encyc. Juris. 493, ¶ 10 in 'Licitation'	a.v.	Domat's <i>Loix Civiles</i> (p. 80)		"s.i."
Article 177	3 Denisart 460, num. 19 ('Partage')	a.v. (in part)	French projet, French Civil Code (p. 80)	1971 sources and Pothier on <i>Successions</i> (vol. 3, p. 75)	"s.i."
Article 178	3 Denisart 460, num. 20 ('Partage')	a.v. (in part)	French projet, French Civil Code (p. 80)		"s.i."
Article 180	3 Denisart 460, num. 21 ('Partage')	v.	Unidentified (p. 80)	Pothier on <i>Successions</i> (vol. 3, p. 76)	"p.i." (Pothier)
Article 181	3 Denisart 460, num. 22 ('Partage')	v.	French projet, French Civil Code (p. 80)	1971 sources and Pothier on <i>Successions</i> (vol. 3, p. 76)	"s.i." (1971 sources); "p.i." (Pothier)
Article 192	7 Encyc. Juris. 186, ¶ 1 in 'Rapport a succession'; see also Boucher d'Argis on 'Rapport a succession' in 13 Did. Encyc. 800, ¶ 1 (a.v.)	a.v.	French projet, Domat's <i>Loix Civiles</i> , Pothier on <i>Successions</i> (p. 81)	1971 sources and <i>Febrero Adicionado</i> (vol. 3, p. 77)	"s.i."
Article 205	7 Encyc. Juris. 187, § 1, ¶ 2 in 'Rapport a succession'	a.v. (in part)	Pothier on <i>Successions</i> (p. 81)		"s.i."
Article 206	7 Encyc. Juris. 187, § 1, ¶ 3 in 'Rapport a succession' (first	a.v. (all three pars.)	Pothier on <i>Successions</i> (p. 82)	French Civil Code, article 854 (second	"s.i. (first par.)" (Pothier); "a.v. (in

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
	par.); French Civil Code, article 854 (second par.); 7 Encyc. Juris. 189, § I, ¶ 18 in ' <i>Rapport a succession</i> ' (third par.)			par.); other two pars. unidentified (vol. 3, p. 80)	part)" (French Civil Code)
Article 207	7 Encyc. Juris. 189, § I, ¶¶ 11–13 in ' <i>Rapport a succession</i> ' (second, third, and fourth pars.); see also Boucher d'Argis on ' <i>Rapport</i> ' in 13 Did. Encyc. 801, ¶¶ 8–10 (a.v.)	a.v. (second, third, and fourth pars.)	French projet, French Civil Code, Pothier on <i>Successions</i> (p. 82)	1971 sources and Domat's <i>Loix Civiles, Febrero Adicionado</i> (vol. 3, p. 80)	"s.i."
Article 208	7 Encyc. Juris. 189, § I, ¶ 16 in ' <i>Rapport a succession</i> '; see also Boucher d'Argis on ' <i>Rapport</i> ' in 13 Did. Encyc. 801, ¶ 13 (a.v., in part)	a.v. (in part) (first par.); v. (second par.)	French projet, French Civil Code, Pothier on <i>Successions</i> (p. 82)	<i>Febrero Adicionado</i> (vol. 3, p. 80)	"s.i."
Article 209	7 Encyc. Juris. 192, § IV, ¶ 4 in ' <i>Rapport a succession</i> '	a.v. (in part)	Pothier on <i>Successions</i> (p. 82)		"s.i."
Article 213	7 Encyc. Juris. 192, § IV, ¶¶ 8–10; 193, ¶ 11 in ' <i>Rapport a succession</i> '	v. (in part) (first par.); v. (second and third pars.)	Pothier on <i>Successions</i> (p. 82)		"s.i." (1971 study); "a.v." (1974 study)
Article 214	7 Encyc. Juris. 193, § IV, ¶ 13 in ' <i>Rapport a succession</i> '	a.v.	Pothier on <i>Successions</i> (p. 82)		"a.v. (in part)"
Article 215	7 Encyc. Juris. 193, § IV, ¶¶ 14–16 in ' <i>Rapport a succession</i> '	a.v. (in part)	Pothier on <i>Successions</i> (p. 82)		"s.i." (1971 study); "a.v. (in part)" (1974 study)
Article 216	7 Encyc. Juris. 193, § IV, ¶¶ 17–19 in ' <i>Rapport a succession</i> '	a.v. (first and second pars.); v. (third par.)	French Civil Code, Pothier on <i>Successions</i> (p. 82)		"s.i." (1971 study); "a.v. (in part)" (1974 study)
Bk. III, Title II (Of donations inter					

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
vivos and mortis causa)					
Article 83	2 Encyc. Juris. 699, ¶ 2 in 'Codicille'; see also Boucher d'Argis on 'Codicille' in 3 Did. Encyc. 586, ¶ 2 (a.v., in part)	a.v.	Domat's <i>Loix Civiles</i> , Pothier on <i>Testaments</i> , <i>Sexta Partida</i> (p. 87)	1971 sources and Guyot's <i>Répertoire</i> (vol. 3, p. 85)	"s.i."
Article 84	2 Encyc. Juris. 700, ¶ 10 in 'Codicille'; see also Boucher d'Argis on 'Codicille' in 3 Did. Encyc. 587, ¶ 9 (a.v., in part)	a.v. (in part)	Pothier on <i>Testaments</i> (p. 87)	1971 sources and <i>Sexta Partida</i> (vol. 3, p. 85)	"s.i."
Article 85	2 Encyc. Juris. 700, ¶ 9 in 'Codicille'	v.	French Civil Code, Domat's <i>Loix Civiles</i> (p. 87)	1971 sources and <i>Febrero Adicionado</i> (vol. 3, p. 85)	"s.i."
Article 86	2 Encyc. Juris. 700, ¶ 14 in 'Codicille'	a.v.	Domat's <i>Loix Civiles</i> (p. 87)		"s.i."
Bk. III, Title III (Of contracts and of conventional obligations in general)					
Article 222	1 Guyot's <i>Répertoire</i> 144, ¶ 7 in 'Acte'	a.v. (in part)	Unidentified (p. 101)		
Article 223	1 Guyot's <i>Répertoire</i> 144, ¶ 7 in 'Acte'	a.v. (in part)	Unidentified (p. 101)		
Bk. III, Title V (Of marriage contract)					
Article 26	4 Encyc. Juris. 35, ¶ 9 in 'Dot'; see also Boucher	v.	Domat's <i>Loix Civiles</i> (p. 104)		"s.i."

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
	d'Argis on 'Dot' in 5 Did. Encyc. 64, ¶ 13 (v.)				
Article 27	4 Encyc. Juris. 35, ¶ 10 in 'Dot'; see also Boucher d'Argis on 'Dot' in 5 Did. Encyc. 64, ¶ 14 (a.v.)	v.	Unidentified (p. 104)	French projet, French Civil Code (vol. 3, p. 104)	"p.i."
Article 28	4 Encyc. Juris. 35, ¶ 11 in 'Dot'; see also Boucher d'Argis on 'Dot' in 5 Did. Encyc. 64, ¶ 15 (a.v., first part)	a.v. (first part)	Domat's <i>Loix Civiles</i> (p. 104)	1971 sources and <i>Febrero Adicionado</i> (vol. 3, p. 104)	"s.i." (1971 sources); "p.i." (1974 sources)
Article 29	4 Encyc. Juris. 35, ¶ 12; see also Boucher d'Argis on 'Dot' in 5 Did. Encyc. 64, ¶ 16 (a.v.)	a.v.	French Civil Code (p. 104)		"s.i." (1971 study); "p.i." (1974 study)
Article 30	4 Encyc. Juris. 35, ¶ 13; see also Boucher d'Argis on 'Dot' in 5 Did. Encyc. 64, ¶ 17 (a.v.)	a.v.	Unidentified (p. 104)		
Bk. III, Title VI (Of sale)					
Article 1	Domat's <i>Loix Civiles</i> (v.) (first par.); 2 Gabriel Argou, <i>Institution au droit français</i> 189 (1773) (v.) (second par.)	v. (both pars.)	Domat's <i>Loix Civiles</i> (first par.); second par. unidentified (p. 104)		"v. (first par.)"
Bk. III, Title XVI (Of respite)					
Article 1	1 Encyc. Juris. 540, ¶ 1 in 'Atermoiment'; see also Toussaint on 'Atermoyement' in 1 Did. Encyc. 798, ¶ 1 (a.v., in part)	a.v. (in part)	Pothier on <i>Obligations</i> (p. 121)	Guyot's <i>Répertoire</i> (vol. 3, p. 112)	"s.i." (1971 sources); "a.v. (in part)" (Guyot)
Article 2	1 Encyc. Juris. 540, ¶ 2 in 'Atermoiment'; see also	v. (first and second pars.); a.v.	Pothier on <i>Obligations, Febrero</i>		"s.i."

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
	Toussaint on ' <i>Atermoyement</i> ' in 1 Did. Encyc. 798, ¶ 3 (a.v.)	(in part) (third par.)	<i>Adicionado</i> (p. 122)		
Article 3	1 Encyc. Juris. 540, ¶ 5 in ' <i>Atermoiment</i> '	a.v. (first part)	Pothier on <i>Obligations</i> , Pothier on <i>Procédure Civile</i> (p. 122)	Guyot's <i>Répertoire</i> (vol. 3, p. 112)	"s.i." (1971 sources); "a.v. (in part)" (Guyot)
Article 5	1 Encyc. Juris. 540, ¶ 4 in ' <i>Atermoiment</i> '	a.v. (in part)	Pothier on <i>Procédure Civile</i> (p. 122)	Guyot's <i>Répertoire</i> (vol. 3, p. 112)	"s.i." (1971 sources); "a.v. (in part)" (Guyot)
Article 6	1 Encyc. Juris. 541, ¶ 12 in ' <i>Atermoiment</i> '	a.v. (first part)	Pothier on <i>Obligations</i> (p. 122)	Guyot's <i>Répertoire</i> (vol. 3, p. 113)	"s.i." (1971 sources); "a.v. (in part)" (Guyot)
Article 8	1 Encyc. Juris. 542, ¶ 2 in ' <i>Atermoiment</i> '; see also Toussaint on ' <i>Atermoyement</i> ' in 1 Did. Encyc. 798, ¶ 2 (s.i.)	s.i.	<i>Curia Philipica</i> (p. 122)		"s.i."
Bk. III, Title XVII (Of compromises or arbitration)					
Article 3	3 Encyc. Juris. 113, ¶ 9 in ' <i>Compromis</i> '; see also Boucher d'Argis on ' <i>Compromis</i> ' in 3 Did. Encyc. 779, ¶ 10 (a.v., first two pars.)	a.v. (first two pars.); s.i. (third par.)	<i>Febrero Adicionado, Curia Philipica</i> (p. 122)	Guyot's <i>Répertoire</i> (vol. 3, p. 113)	"s.i." (Spanish sources); "a.v. (in part)" (Guyot)
Article 4	Domat's <i>Loix Civiles</i> (first clause); 3 Encyc. Juris. 113, ¶ 6 in ' <i>Compromis</i> ' (second clause); see also Boucher d'Argis on ' <i>Compromis</i> ' in 3 Did. Encyc. 779, ¶ 7 (a.v.)	a.v.	Domat's <i>Loix Civiles</i> (p. 122)		"a.v. (first part)"
Article 8	1 Denisart 490, ¶ 5 in (' <i>Compromis</i> ')	a.v.	Domat's <i>Loix Civiles</i> , Pothier on <i>Procédure Civile</i> (p. 123)	1971 sources and Guyot's <i>Répertoire</i> (vol. 3, p. 113)	"s.i."

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
Article 12	1 Encyc. Juris. 408, ¶ 2, 409, ¶ 5 in 'Arbitre'	a.v. (in part)	<i>Tercera Partida, Febrero Adicionado, Curia Philipica</i> (p. 123)		"s.i."
Article 24	1 Encyc. Juris. 409, ¶ 5 in 'Arbitre'; see also Toussaint on 'Arbitre' in 1 Did. Encyc. 579, ¶ 6 (a.v., in part)	a.v. (in part)	Pothier on <i>Procédure Civile, Curia Philipica</i> (p. 124)	<i>Curia Philipica</i> (vol. 3, p. 115)	"s.i."
Article 25	1 Encyc. Juris. 409, ¶ 6 in 'Arbitre'	a.v.	<i>Curia Philipica</i> (p. 124)	Domat's <i>Loix Civiles, Tercera Partida</i> (vol. 3, p. 116)	"p.i."
Article 33	3 Encyc. Juris. 113, ¶ 4 in 'Compromis'	a.v. (first part)	Pothier on <i>Procédure Civile, Febrero Adicionado, Curia Philipica</i> (p. 124)	1971 sources and Domat's <i>Loix Civiles</i> (vol. 3, p. 116)	"s.i."
Bk. III, Title XVIII (of pledge)					
Article 4	4 Encyc. Juris. 679, ¶ 5 in 'Gage'; see also Boucher d'Argis on 'Gage' in 7 Did. Encyc. 414, ¶ 7 (v.)	v.	Pothier on <i>Nantissement</i> (p. 125)	1971 sources and <i>Febrero Adicionado</i> (vol. 3, p. 117)	"s.i."
Article 10	4 Encyc. Juris. 679, ¶ 13 in 'Gage'; see also Boucher d'Argis on 'Gage' in 7 Did. Encyc. 414, ¶ 14 (v.)	v.	Domat's <i>Loix Civiles</i> (p. 125)		"p.i."
Article 11	4 Encyc. Juris. 679, ¶ 14 in 'Gage'	a.v.	French projet (p. 125)	1971 sources and Pothier on <i>Nantissement, Tercera Partida</i> (vol. 3, p. 117)	"s.i."
Article 15	4 Encyc. Juris. 680, ¶ 7 in 'Gage'; see also Boucher d'Argis on 'Gage' in 7 Did.	v.	Pothier on <i>Nantissement</i> (p. 125)	1971 sources and <i>Tercera Partida</i> (vol. 3, p. 117)	"s.i."

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
	Encyc. 414, ¶ 27 (a.v., first part only)				
Article 18	4 Encyc. Juris. 680, ¶ 11 in 'Gage'; see also Boucher d'Argis on 'Gage' in 7 Did. Encyc. 414, ¶ 32 (a.v.)	a.v.	Domat's <i>Loix Civiles</i> (p. 125)	1971 sources and Pothier on <i>Nantissement, Tercera Partida</i> (vol. 3, p. 117)	"s.i. (first part)"
Article 19	4 Encyc. Juris. 680, ¶ 14 in 'Gage'; see also Boucher d'Argis on 'Gage' in 7 Did. Encyc. 414, ¶ 34 (a.v.)	a.v.	Domat's <i>Loix Civiles</i> (p. 125)		"s.i."
Article 20	4 Encyc. Juris. 680, ¶ 15 in 'Gage'; see also Boucher d'Argis on 'Gage' in 7 Did. Encyc. 414, ¶ 35 (v.)	v.	Domat's <i>Loix Civiles</i> (p. 125)	1971 sources and Pothier on <i>Nantissement</i> (vol. 3, p. 117)	"p.i." (1971 sources); "s.i." (1974 sources)
Article 21	4 Encyc. Juris. 680, ¶ 16 in 'Gage'; see also Boucher d'Argis on 'Gage' in 7 Did. Encyc. 414, ¶ 36 (v.)	v.	Domat's <i>Loix Civiles</i> (p. 125)		"s.i."
Bk. III, Title XIX (Of privileges and mortgages)					
Article 2	5 Encyc. Juris. 99, § 1, ¶¶ 1–2 in 'Hypothèque'	a.v. (first par.); a.v. (in part) (second par.)	Domat's <i>Loix Civiles</i> (p. 126)		"s.i." (1971 study); "p.i." (1974 study)
Article 8	5 Encyc. Juris. 99, § 1, ¶ 6 in 'Hypothèque'	a.v.	Domat's <i>Loix Civiles</i> (p. 126)	1971 sources and French projet, French Civil Code, Pothier on <i>Hypothèque, Curia Philipica</i> , and	"s.i." (1971 sources); "p.i." (1974 sources)

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
				<i>Febrero Adicionado</i> (vol. 3, p. 118)	
Article 15	5 Encyc. Juris. 99, § 1, ¶ 10 in 'Hypothèque'	v. (first par.)	Domat's <i>Loix Civiles</i> (p. 126)	1971 sources and Pothier on <i>Hypothèque</i> , <i>Febrero Adicionado</i> (vol. 3, p. 119)	"s.i."
Article 29	5 Encyc. Juris. 100, § 1, ¶¶ 8–10 in 'Hypothèque'	s.i. (first par.); a.v. (second par.); s.i. (third par.); a.v. (fourth par.)	Domat's <i>Loix Civiles</i> , Pothier on <i>Hypothèque</i> (p. 127)		"s.i."
Article 30	5 Encyc. Juris. 100, § 1, ¶ 12 in 'Hypothèque'	a.v.	Domat's <i>Loix Civiles</i> , Pothier on <i>Hypothèque</i> (p. 127)	1971 sources and <i>Febrero Adicionado</i> , <i>Curia Philippica</i> (vol. 3, p. 120)	"s.i."
Article 31	5 Encyc. Juris. 100, § 1, ¶¶ 14 in 'Hypothèque'	a.v.	French projet, Pothier on <i>Hypothèque</i> (p. 127)	Domat's <i>Loix Civiles</i> , <i>Febrero Adicionado</i> (vol. 3, p. 121)	"s.i."
Article 32	5 Encyc. Juris. 101, § 3, ¶ 1 in 'Hypothèque'	a.v.	French projet, French Civil Code, Pothier on <i>Hypothèque</i> (p. 127)	1971 sources and <i>Quinta Partida</i> , <i>Febrero Adicionado</i> (vol. 3, p. 121)	"s.i."
Article 33	5 Encyc. Juris. 101, § 3, ¶¶ 4–5 in 'Hypothèque'	a.v. (in part)	Pothier on <i>Hypothèque</i> (p. 127)	Domat's <i>Loix Civiles</i> (vol. 3, p. 121)	"s.i." (1971 sources); "p.i." (1974 sources)
Article 39	5 Encyc. Juris. 104, § V, ¶ 16–17	a.v. (first clause); v. (num. 1); a.v. (num. 2); a.v. (in part) (num. 3)	Domat's <i>Loix Civiles</i> (p. 128)		"s.i."

Digest of 1808 Article	Encyclopedic source (Brostoff, 2020) *with indirect relationships to Diderot's <i>Encyclopédie</i> noted as appropriate	Actual source's phraseological resemblance to Digest (Brostoff, 2020)	Batiza, 1971 study proposed actual source	Batiza, 1974 study proposed actual source, if revised from 1971 study	Batiza, 1971/74 studies sources' phraseological resemblance to Digest
Bk. III, Title XX (Of occupancy, possession and prescription)					
Article 1	6 Encyc. Juris. 247, ¶ 1 in ' <i>Occupation</i> '; see also Boucher d'Argis on ' <i>Occupation</i> ' in 11 Encyc. 333, ¶ 1 (a.v.)	a.v.	Pothier on <i>Propriété</i> (p. 130)		"s.i."
Article 2	6 Encyc. Juris. 247, ¶ 2 in ' <i>Occupation</i> '	v.	Pothier on <i>Propriété</i> , Justinian's <i>Institutes</i> (p. 130)	Guyot's <i>Répertoire</i> (vol. 3, p. 123)	"p.i."
Article 3	6 Encyc. Juris. 247, ¶ 3 in ' <i>Occupation</i> '; see also Boucher d'Argis on ' <i>Occupation</i> ' in 11 Did. Encyc. 333, ¶ 3 (a.v.)	a.v.	Pothier on <i>Propriété</i> (p. 130)		"s.i."