proved by the legislature in 1822 and again in 1823, but by an accident the draft was destroyed in November, 1823, and when, after two years of toil, he had rewritten it, the legislative mind seems to have altered* and the code was not adopted. Futile attempts were made, the last in 1831, to secure its adoption (Livingston's absence in other fields probably contributed to the failure), and the opportunity of possessing perhaps the most enlightened and most nearly perfect criminal code ever compiled was stubbornly rejected by the people of Louisiana.

In other quarters, however, the work of systematization advanced. Moreau Lislet, Livingston, and Derbigny, appointed in 1822 to prepare a civil code and a code of practice, reported in 1825 a code of practice, probably founded on the earlier one of Livingston,† but of ampler scope, and a new civil code. Both were adopted. The civil code was intended to supplant all existing law relating to the subjects covered by the new document, but a doubt arose as to the efficacy of this repeal,‡ and by the act of 25 March, 1828, all civil laws§ existing before the promulgation of the new code were repealed. Thus were finally swept away the laws of Spain.‖ It is said that the part of the code dealing with obligations was entirely from Livingston's hands. The codifiers, in their report of 1823, declare that "in the Napoleon code we have a system approaching nearer than any to perfection," and their code evinces their admiration for the continental model which they took. The form, and, in general, the titles and divisions correspond closely to those of the French code. The Louisiana jurists evidently took the latter as their original material, and in their discretion pruned from it unsuitable clauses, or added to it desirable provisions taken from other systems or suggested by their own experience. All helpful sources were freely sought, and there was no servile adherence to any model. It was intended at the same time to reduce the law merchant to the form of a code, but this part of the general work was never adopted,* and in commercial matters the law merchant of the United States remained in force, when not in conflict with legislation or usage in Louisiana;† for it had been held that by the cession the law merchant of the United States came into force,‡ and it was in existence side by side with the old code.§ It was also intended to present in codified form the rules of evidence.‖ Possibly at first the Spanish law of evidence had prevailed, but at an early date the practice changed,¶ for the harshness of the Spanish law and the difficulty of conducting jury trials by other than the accustomed rules of evidence made it easy to find a justification, on the ground that the Spanish law was inconsistent with the institutions of the new government and was therefore repealed.** The plan of a code of evidence was not carried out, but many of the leading principles of the subject were incidentally incorporated in the civil code.††

At this time then (1828) the great body of private law was in codified form, arranged and founded on Roman law principles, modified by considerations drawn from various sources. The commercial law was that in force generally throughout the United States, and was still to be found in the decisions of the judges. The criminal law included only statutory offences, but for the definitions of the larger number of those offences search had to be made in the common-law decisions. The law of evidence was the common law, still uncodified. Practice and procedure were governed by the code of 1825. The common-law element was and is perhaps larger than is usually believed by lawyers of other states. The terminology of the English law crept in with the language, and is found here and there through the law in places where it would be least looked for. Perhaps in no portion does the spring of the civil law flow pure for any long period. Yet the civil code is thoroughly and essentially Roman, and it remains true that the Roman system of law must form a fundamental part of the equipment of a lawyer in Louisiana.

Later changes in the law have not been radical, and, it may be added, have not been characterized by the reforming spirit of 1820-30. Several digests have appeared, the codes have been amended, and general revisions of the statute law have been made in 1854–5 and in 1870; but that first of all legislative duties, the publication of a penal code, has never been executed.

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principle, viz.: the prevention of crime,"—is an expression of advanced thought noticeable for those days as a legislative utterance, and in contrast even with the divided sentiment of to-day, when Sir James Stephen (doubtless misled by the English system of prosecutions and confounding the motive of the prosecutor with the object of the law) is found to declare that one of the two objects of criminal law is the satisfaction of the passion of revenge within proper limits. (Gen. View of Crim. Law, etc., pp. 98-9.)

* Largely, it is said, through the efforts of Judge Seth Lewis, a perverse defender of the established order (or disorder) of things. See "Remarks, etc., Seth Lewis, 1931; Some Strictures, etc." Seth Lewis, 1825.

† Gilpin, Biographical Notice of Livingston.

‡ 6 Mart. (N. S.) 90.

§ That is, not as distinguished from criminal laws, but as embracing all law of Roman origin: 5 La. Rep. 493.

‖ 7 La. Rep. 543.

* Martin, J., in 2 Robinson's Rep. 122; it was never prepared, according to 19 La. Rep. at 592.

† 5 La. Rep. at 408.

‡ 2 Reb 122.

§ 2 Mart. 304; 12 *Id.* 498.

‖ 8 La. Ann. 13.

¶ 3 La. Rep. at 86; 9 La. Rep. 520.

**6 Mart. at 673; 10 *Id.* at 566.

††19 La. Rep. at 591.