

---

---

---

# LOYOLA

# LAW REVIEW

---

---

Introduction to the Special Issue

*E. Phelps Gay, Alan G. Brackett & John Tarlton Olivier*

The Dynamics of Codification in Louisiana: Is the Civil Code Soft Law?

*Olivier Moréteau*

The 1825 Louisiana Civil Code: Its Janus-Faced Split Between Forward-Looking Principles and the Enshrinement of Unfair Rules

*Michael H. Rubin*

From New York Politician to Louisiana Code Writer:  
The Tumultuous Life and Times of Edward Livingston

*E. Phelps Gay*

*Tunc Pro Nunc*—Modern Cases Through the Lens of the 1825 Civil Code

*Hon. Brady D. O'Callaghan & Clinton Bowers*

Moreau Lislet & the Birth of the Civil Code

*Hon. Jay B. McCallum*

A Bicentennial Approach to an Exegetical School of Private Law in Louisiana

*Agustín Parise*

The Role of Unwritten Laws in the Louisiana Civil Code of 1825:

A Historical and Comparative Perspective

*Aniceto Masferrer*

Politics and the Making of the Civil Code of 1825

*Warren M. Billings*

Pierre Auguste Charles Bourguignon Derbigny: Career, Cases and Code

*Markus G. Puder*

How the 1825 Civil Code Shaped Modern Louisiana Civil Law

*Ronald J. Scalise Jr.*

A Mirror to Society: The Legacy of the 1825 Civil Code of Louisiana

*Shawn D. Vance*

Saúl Litvinoff's Impact on the Civil Code

*Ana Litvinoff*

Culminating Remarks

*Hon. John Michael Guidry*



# LOYOLA LAW REVIEW



*ius est ars boni et aequi*

**VOLUME 71  
SPECIAL ISSUE 2025**

**The Supreme Court of Louisiana Historical Society's  
Commemoration of the Bicentennial of the 1825  
Louisiana Civil Code**

COLLEGE OF LAW  
LOYOLA UNIVERSITY  
NEW ORLEANS, LA 70118

Copyright 2025  
Loyola University New Orleans College of Law  
Loyola Law Review

# LOYOLA LAW REVIEW

2024-2025

MEGAN KING  
*Editor-in-Chief*

CLAIRE A. DINWIDDIE  
*Managing Editor, Print*

DAVID B. GROSS  
*Managing Editor, Print*

AUBREY D. RECTOR  
*Managing Editor, Online*

ANNA K. GILBERT  
*Online Editor*

DILLON M. KNIGHT  
*Articles Editor*

OLIVIA C. TAYLOR  
*Articles Editor*

BENNETT L. MATSON  
*Casenote & Comment Editor*

ABIGAIL J. WALLACE  
*Casenote & Comment Editor*

ROBERT C. SANDERS, JR.  
*Managing Substance & Citation Editor*

ANH T. P. DO  
*Substance & Citation Editor*

MALLORY E. SPEER  
*Substance & Citation Editor*

RYAN J. TAIX  
*Substance & Citation Editor*

ASHLEY E. WHITE  
*Candidate Development & Symposium Editor*

## MEMBERS

DONOVAN J. BENTON  
BELEN GOICOECHEA RUIZ  
MAYOWA T. OLATUNDE

STEPHEN CAPELLA  
KEVIN T. KUHM

JOLEEN DACULA  
ELI LARRIVIERE  
CHRISTOPHER G. SALERNO

## CANDIDATES

PETER J. BAGLEY  
CHRISTOPHER CALDARERA  
HANNAH C. DANIEL  
HANNAH E. GUERRA  
MARCELLE LAFRANCA  
RACHEL AVERY NORWOOD  
ABIGAIL E. STROHMEYER

EMILY A. BERTHELOT  
JIMMY CHILIMIGRAS  
JOHN F.M. DONOVAN  
MAEVE R. HURSON  
ALEJANDRO H. MEDINA  
MOLLY E. PAYNE  
MARY HELEN VANHOY  
PAT C. WINTERS

BREANNA L. BURKHEAD  
ELIZABETH M. COMAN  
OLIVIA G. GILLIS  
JACOB JIMENEZ  
THOMAS A. NATAL, JR.  
GRACE F. SCHAUMBURG  
MATTHEW C. WHITE

MONICA HOF WALLACE  
*Faculty Advisor*

MICHELLE P. MORLIER  
*Business Manager*

# LOYOLA LAW REVIEW

Volume 71, Number 3, Special Issue 2025

## CONTENTS

### ARTICLES

Introduction to the Special Issue: The Supreme Court of Louisiana Historical Society's Commemoration of the Bicentennial of the 1825 Louisiana Civil Code	<i>E. Phelps Gay, Alan G. Brackett &amp; John Tarlton Olivier</i>	537
The Dynamics of Codification in Louisiana: Is the Civil Code Soft Law? <i>Introduction by E. Phelps Gay</i>	<i>Olivier Moréteau</i>	539
The 1825 Louisiana Civil Code: Its Janus-Faced Split Between Forward-Looking Principles and the Enshrinement of Unfair Rules <i>Introduction by E. Phelps Gay</i>	<i>Michael H. Rubin</i>	557
From New York Politician to Louisiana Code Writer: The Tumultuous Life and Times of Edward Livingston <i>Introduction by Michael H. Rubin</i>	<i>E. Phelps Gay</i>	581
<i>Tunc Pro Nunc</i> —Modern Cases Through the Lens of the 1825 Civil Code <i>Introduction by E. Phelps Gay</i>	<i>Hon. Brady D. O'Callaghan &amp; Clinton Bowers</i>	617
Moreau Lislet & the Birth of the Civil Code <i>Introduction by E. Phelps Gay</i>	<i>Hon. Jay B. McCallum</i>	651
A Bicentennial Approach to an Exegetical School of Private Law in Louisiana <i>Introduction by Olivier Moréteau</i>	<i>Agustín Parise</i>	669

The Role of Unwritten Laws in the  
Louisiana Civil Code of 1825:  
A Historical and Comparative  
Perspective  
*Introduction by Markus G. Puder*

Aniceto Masferrer 701

Politics and the Making of the Civil  
Code of 1825  
*Introduction by E. Phelps Gay &  
Howard Hunter*

Warren M. Billings 785

Pierre Auguste Charles Bourguignon  
Derbigny: Career, Cases and Code  
*Introduction by Monica Hof Wallace*

Markus G. Puder 801

How the 1825 Civil Code Shaped Modern  
Louisiana Civil Law  
*Introduction by Alan G. Brackett*

Ronald J. Scalise Jr. 819

A Mirror to Society: The Legacy of the  
1825 Civil Code of Louisiana—What  
We Are, What We Could Have Been,  
and What We Will Be

Shawn D. Vance 835

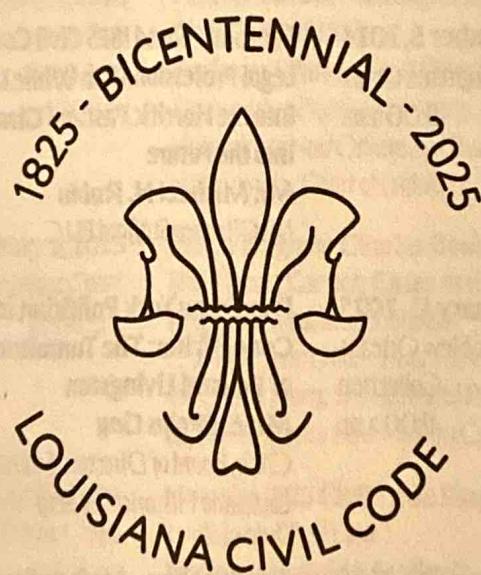
Saúl Litvinoff's Impact on the  
Civil Code

Ana Litvinoff 847

Culminating Remarks

Hon. John Michael Guidry 849

COMMEMORATION  
OF THE BICENTENNIAL OF THE 1825  
LOUISIANA CIVIL CODE



SCHEDULE OF EVENTS

PRESENTED BY

THE SUPREME COURT OF LOUISIANA HISTORICAL SOCIETY



## SCHEDULE OF EVENTS

**October 7-8, 2024**  
St Louis Cathedral  
Louisiana Supreme Court

**October 8, 2024**  
Windsor Court Hotel  
11:30 a.m.

**December 5, 2024**  
Louisiana Supreme Court  
9:00 a.m.

**February 13, 2025**  
Historic New Orleans  
Collection  
11:00 a.m.

**February 20, 2025**  
Robinson Film Center  
Shreveport  
5:00 p.m.

**March 13, 2025**  
University of Louisiana Monroe  
5:00 p.m.

**March 20-21, 2025**  
Louisiana State University  
Paul M. Hebert Law Center

**Inaugural Events**  
Red Mass  
Fall Judges Conference Evening Reception

**The Dynamics of Codification in Louisiana:  
Is the Civil Code Soft Law?**  
**Professor Olivier Moréteau**  
Russell B. Long Eminent Scholars Chair, Justice Pike Hall  
Distinguished Professorship, Assistant Dean & Director of  
the Center of Civil Law Studies, Louisiana State  
University, Paul M. Hebert Law Center

**The Janus-Faced 1825 Civil Code:  
Legal Professionalism While Looking Backwards  
Into the Horrific Past and Glancing Forward  
Into the Future**  
**Mr. Michael H. Rubin**  
McGlinchey Stafford PLLC

**From New York Politician to Louisiana  
Code Writer: The Tumultuous Life and Times  
of Edward Livingston**  
**Mr. E. Phelps Gay**  
Chair, Board of Directors, Supreme Court of  
Louisiana Historical Society

**Tunc Pro Nunc – Modern Cases Through the Lens  
of the 1825 Civil Code**  
**Judge Brady D. O'Callaghan**  
First Judicial District Court  
**Mr. Clinton M. Bowers**  
Bowers Law Firm, LLC

**Moreau Lislet & the Birth of the Civil Code**  
**Justice Jay B. McCallum**  
Louisiana Supreme Court

**International Conference on the Bicentennial  
of the Civil Code of Louisiana - The Louisiana  
Civil Code of 1825: Content, Influence,  
and Languages, Past and Future**

**March 20, 2025**

Louisiana State University  
Paul M. Hebert Law Center  
6:00 p.m.

**The Tucker Lecture:**

**A Bicentennial Approach to an Exegetical  
School of Private Law in Louisiana**

**Professor Agustin Parise**

Associate Professor of Law, Maastricht University,  
The Netherlands

**March 27, 2025**

Loyola University New Orleans  
College of Law  
5:00 p.m.

**Brendan F. Brown Lecture:**

**The Role of Unwritten Laws in the 1825  
Civil Code of Louisiana in Perspective:  
From the Past to the Present**

**Professor Aniceto Masferrer**

Professor of Legal History, University of Valencia, Spain

**April 11, 2025**

Metairie Park  
Country Day School  
5:30 p.m.

**Politics and the Making of the  
Civil Code of 1825**

**Professor Warren M. Billings**

Distinguished Professor of History, Emeritus,  
University of New Orleans and Bicentennial Historian  
of the Supreme Court of Louisiana

**May 2, 2025**

Louisiana Supreme Court  
10:30 a.m.

**Pierre Auguste Charles Bourguignon**

**Derbigny: Career, Cases and Code**

**Professor Markus G. Puder**

LL.M. Program Director and The Honorable Herbert  
W. Christenberry Distinguished Professor of Law  
Loyola University New Orleans College of Law

**May 16, 2025**

Louisiana Supreme Court  
9:30 a.m.

**How the 1825 Civil Code Shaped Modern  
Louisiana Civil Law**

**Professor Ronald J. Scalise Jr.**

John Minor Wisdom Professor of Civil Law  
Tulane Law School

**May 30, 2025**

Southern University Law Center  
6:30 p.m.

**A Mirror to Society - The Legacy of the 1825  
Civil Code of Louisiana**

**Professor Shawn D. Vance**

Vice Chancellor for Academic Affairs,  
Justice Revius O. Ortique, Jr. Endowed Professor  
Southern University Law Center

**Saul Litvinoff's Impact on the Civil Code**

**Ana Litvinoff**

**Culminating Remarks**

**Justice John Michael Guidry**

**June 20, 2025**

**Closing Gala**

National World War II Museum

**COMMEMORATION OF THE BICENTENNIAL  
OF THE 1825 LOUISIANA CIVIL CODE**  
**Supreme Court of Louisiana Historical Society Steering Committee**



**EX OFFICIO MEMBERS**

*Chief Justice John L. Weimer*

*Justice Jefferson Hughes, Justice William J. Crain, Justice Jay B. McCallum  
Justice Piper D. Griffin, Justice John Michael Guidry, Justice Cade R. Cole*

**MEMBERS**

*Alan G. Brackett, Co-Chair*

*John Tarlton Olivier, Co-Chair and SCLAHS Vice Chair*

*E. Phelps Gay, SCLAHS Chair*

*Hon. Mary Hotard Becnel (Retired)*

*Catherine J. Newsome, SCLAHS Secretary*

*Professor Warren M. Billings*

*Judge Brady D. O'Callaghan*

*Georgia D. Chadwick*

*Judge Darrel J. Papillion*

*Benjamin W. Janke, SCLAHS Treasurer*

*Warren A. Perrin*

*Terry J. Johnson*

*Professor Ronald J. Scalise Jr.*

*Veronica O. Koclans*

*Shayna Sonnier*

*Louis R. Koerner, Jr.*

*Patrick A. Talley, Jr.*

*Loretta Larsen*

*Professor Shawn D. Vance*

*Professor Olivier Moréteau*

*Professor Monica Hof Wallace*

**SPECIAL THANKS**

*Louisiana Supreme Court*

*Lieutenant Governor Billy Nungesser,*

*Louisiana State Legislature*

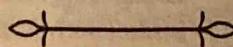
*Louisiana Department of Culture,*

*Law Library of Louisiana*

*Recreation & Tourism*

*Presentations commemorating the Bicentennial of the 1825 Civil Code  
will be preserved in Volume 71 of the Loyola Law Review, which will be issued  
at the conclusion of the events.*

*Graphic Design by Viviane Moréteau*



INTRODUCTION TO THE SPECIAL ISSUE:  
THE SUPREME COURT OF LOUISIANA  
HISTORICAL SOCIETY'S  
COMMEMORATION OF THE BICENTENNIAL  
OF THE 1825 LOUISIANA CIVIL CODE

On behalf of the Board of Directors and members of the Supreme Court of Louisiana Historical Society, we express our deep gratitude to the editors of *Loyola Law Review* for agreeing to edit and publish the papers written and speeches delivered by a diverse group of scholars, jurists, lawyers, and historians commemorating the Bicentennial of the 1825 Louisiana Civil Code.

The Historical Society's mission is to preserve and promote the history of the Supreme Court of Louisiana, including its influence on the development of civil law; to research, publish, and create items and materials of historical interest; and to make the results of this research available for educational purposes. This publication of our "commemorative efforts" from October 2024 to June 2025 represents a significant milestone in the fulfillment of our mission.

Henry Ford once said, "If everyone is moving forward together, then success takes care of itself." With this project, everyone moved together—from the Justices of the Louisiana Supreme Court who gave us their unwavering support to the members of our Steering Committee who organized our events; and from the talented staff at the Law Library of Louisiana who created informative educational exhibits for display at each venue to the Co-Chairs of our Closing Gala who orchestrated our final event on June 20, 2025, at the National World War II Museum. Special thanks also go to the Louisiana State Legislature and Governor who provided financial support to defray our expenses in traveling around the state to tell the story of how the "enduring" Louisiana Civil Code of 1825 came to be adopted.

Of course, for the stories told in these pages, we are primarily indebted to the jurists, scholars, historians, and attorneys who researched, wrote, and delivered them to audiences around the

state. I trust you will agree they have made a significant contribution to our knowledge and understanding of Louisiana history and law.

*E. Phelps Gay, Board Chair, Supreme Court of Louisiana Historical Society*

*Alan G. Brackett, Co-Chair of the Steering Committee to Commemorate the Bicentennial of the 1825 Louisiana Civil Code*

*John Tarlton Olivier, Co-Chair of the Steering Committee to Commemorate the Bicentennial and Vice Chair of the Supreme Court of Louisiana Historical Society*