

LAW REFORM AND CODIFICATION

June 10, 2020



Codification, Transplants and History

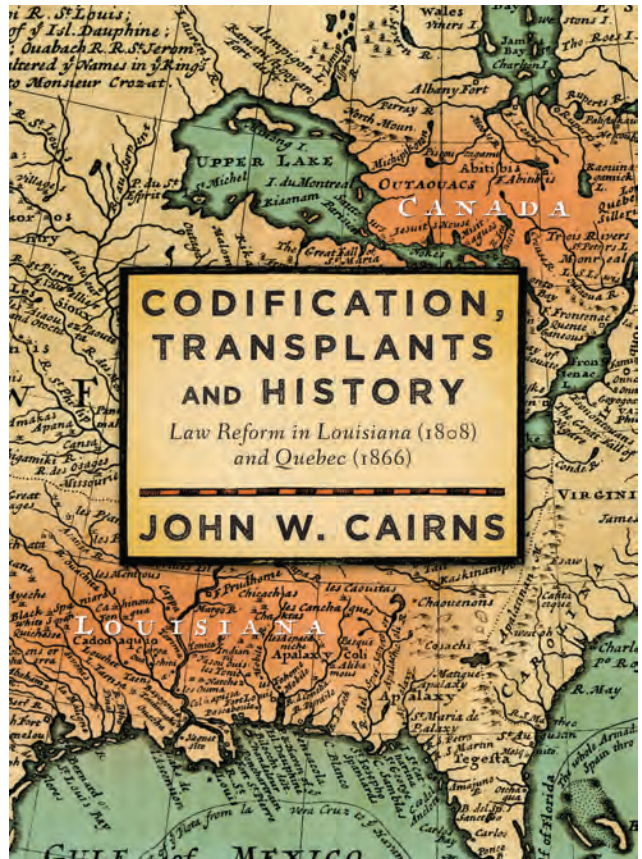
Law Reform in Louisiana (1808) and Quebec (1866)

John W. Cairns

When Louisiana enacted its Digest of the Civil Laws in 1808 and Quebec its Civil Code of Lower Canada in 1866, both jurisdictions were in a period of transition — economic, social and political. In both, the laws had originally been transplanted from European nations whose societies were in many ways different from theirs.

This book offers the first systematic and detailed exploration of the two new codes in light of social and legal change. Cairns examines the rich, complex, and varying legal cultures — French, Spanish, Civilian and Anglo-American — on which the two sets of redactors drew in drafting their codes. He places this examination in the context surrounding each codification, and the legal history of both societies.

Cairns offers a detailed analysis of family law and employment in the two codes, showing how their respective redactors selected from a defined range of sources and materials to construct their codes. He shows that they acted relatively freely, attempting to inscribe into law rules reflecting what they understood to be the needs of their society, from an essentially intuitive and elite perspective. While not propounding a universal theory of legal development, Cairns nonetheless shows the types of factors likely to influence legal change more generally.



xliv, 559 pp.

Hardcover

May 2015

Talbot Publishing

ISBN 978-1-61619-509-0

\$95.

The addition of Dr. Cairns' comparative work *Codification, Transplants and History* greatly enriches the scholarship of Louisiana legal history and can serve as a fruitful starting point for newcomers. Cairns first explored the relationships of legal and social change in comparing the early codifications of Louisiana and Quebec through the lens of Alan Watson's "legal transplants" theory in his University of Edinburgh PhD thesis completed in 1980. Renewed interest in this work afforded Cairns the opportunity to build on that foundation and add his own well respected approach to this welcome contribution. His excellent introduction is required reading for anyone interested in Louisiana legal history.

GEORGIA CHADWICK
Director, Law Library of Louisiana

John Cairns' *Codification, Transplants and History* may be the most important book about the origins of the Louisiana Civil Code ever published. Originally written in the late 1970s as his Ph.D. thesis for the University of Edinburgh under the tutelage of Alan Watson, Cairns' study provides a detailed analysis of the methods and sources used by the first codifiers of Louisiana and Quebec Civil Law and the legal, political and social context in which they worked. In particular, Cairns' analysis of the drafting of the 1808 Digest of the Territory of Orleans resolves, to a greater extent than any work published to date, the famous debate between Robert Pascal and Rodolfo Batiza over the sources, purposes and meaning of Louisiana's first attempt at codification. Moreover, with its insightful, newly drafted historiographic introduction, Cairns' book explains why resolution of that debate cannot be marginalized as an obsession of scholars enthralled by Louisiana exceptionalism but rather remains central to any complete understanding of Louisiana legal history. Cairns' comparative account of codification in Louisiana and Quebec will also be the starting point of all other comparative studies of these two important North American mixed jurisdictions for years to come.

JOHN A. LOVETT

De Van D. Daggett, Jr. Distinguished Professor,
Loyola University New Orleans College of Law

Completed in the era of fountain pen, typewriters and snail-mail, this book is a major contribution to legal history and to legal theory. Professor Cairns shows that in Louisiana (1808) and in Quebec (1865), codifiers enjoyed a remarkable degree of freedom when restating the former law or, in the second case, suggesting amendments. His painstaking analysis of the rules they needed to consult allow him to deduce the reasons for the choices they made. He argues that a variety of factors explained innovation or stasis, such as legal or conservative ideologies, political considerations and socio-economic changes. Therefore, he considers lawmakers to be essentially social actors, instead of skilled technicians.

MICHEL MORIN

Faculty of Law, University of Montreal

Legal historians in Louisiana and Quebec will experience an epiphany in reading this masterful study. Though written and researched more than thirty five years ago, it deals with timeless questions and ancient debates and seems as fresh and relevant as if it had been penned yesterday. Cairns brings to historical controversies such as the Pascal-Batiza debate over legal sources what has been essentially missing from that debate all along. Instead of unproven assertions and unhistorical assumptions, he examines core codal ideas through a comparative conceptual lens and brings to the debate all the light that comparative law and legal history can shed. This work is sophisticated, meticulous and immensely illuminating.

VERNON VALENTINE PALMER

Thomas Pickles Professor of Law, Co-Director, Eason Weinmann Center for
International and Comparative Law, Tulane Law School

author of *Through the Codes Darkly: Slave Law and Civil Law in Louisiana*, *The Louisiana Civilian Experience: Critiques of Codification in a Mixed Jurisdiction* and *Louisiana: Microcosm of a Mixed Jurisdiction*

At last, this classic is widely available. John W. Cairns reminds us of the complexity of codification, a process intensified in the pluralist and rapidly changing North American jurisdictions of Quebec and Louisiana. A crackling review of the recent literature of codification, including the 'New Louisiana Legal History', adds to the work's relevance.

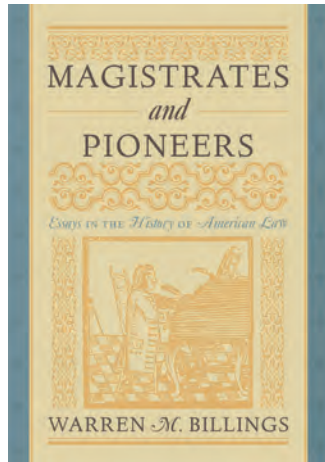
BRIAN YOUNG

James McGill Professor of History (emeritus), McGill University,
author of *The Politics of Codification: The Lower Canadian Civil Code of 1866*



JOHN W. CAIRNS is a graduate of the University of Edinburgh, where he now occupies the Chair of Civil Law. He has taught at the Queen's University Belfast (1980–1984) and served as a Visiting Professor at Southern Methodist University, Dallas, and the University of Miami, Florida. He was elected a Fellow of the Royal Society of Edinburgh in 2007. His research has focused on the history of Scots law (particularly legal literature, legal education, and the legal profession in the eighteenth century) slavery and the law (particularly in the eighteenth century) and the legal history of Louisiana and Quebec.

Selected Titles



Magistrates and Pioneers Essays in the History of American Law

Warren M. Billings

Foreword by Mark F. Fernandez

Clark, New Jersey: The Lawbook Exchange, Ltd., 2011
xix, 460 pp.

Collects eighteen essays (five of which are new) by the historian Warren M. Billings. They address the main areas of his research, nineteenth century Louisiana and seventeenth century Virginia. From Opechancanough, a seventeenth-century Indian chief to Sir William Berkeley, colonial governor of Virginia, to Edward Livingston, coauthor of Louisiana's first civil code, to the legendary Louisiana Governor and U.S. Senator Huey Long, Billings brings to life the forces behind the legal development of these two historically distinctive states. Many of these are classic essays, all are essential to students of American legal history.

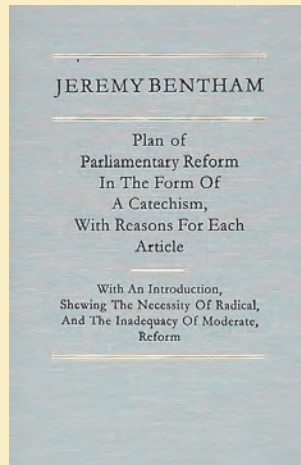
Few scholars match Warren Billings for the depth and integrity of their research, or the elegance of their prose. These essays, the fruits of four decades of immersion in technically difficult archives and spanning four centuries of Virginia and Louisiana history, gracefully connect often arcane legal processes to the larger cultures in which they were situated.

Kevin R. Hardwick
James Madison University

WARREN M. BILLINGS is Distinguished Professor of History, Emeritus, at the University of New Orleans. Currently, he is Visiting Professor of Law at the William and Mary Law School. Billings is the author or editor of numerous titles, including *A Little Parliament: The General Assembly of Virginia in the Seventeenth Century*, *A Law Unto Itself?: Essays in the New Louisiana Legal History*

Hardcover 2011 ISBN 978-1-61619-127-6
\$59.95

Paperback 2011 ISBN 978-1-61619-128-3
\$49.95



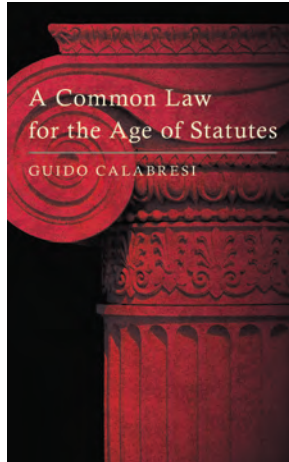
Plan of Parliamentary Reform In the Form of a Catechism, with Reasons for Each Article. With an Introduction, Shewing the Necessity of Radical, and the Inadequacy of Moderate, Reform

Jeremy Bentham

Originally published: London: T.J. Wooler, 1818
[vi], 156 pp.

Hardcover 2002 ISBN 978-1-58477-121-0
\$34.95

The legendary law reformer points his pen directly at the British class system as it is manifested in the Parliament and its processes, calls for expansive democratic reform in the form of "democratical ascendancy," (15) and praises the United States Constitution. After the publication of this volume in 1818, his plea for universal suffrage was criticized by the *Edinburgh Review* for the expectation that it would lead to attacks on property. See Holdsworth, *History of English Law XIII*:104, 251.



A Common Law for the Age of Statutes

Guido Calabresi

Originally published: Cambridge: Harvard University Press, 1982.
[x], 319 pp.

Calabresi complains that we are "choking on statutes" and proposes a restoration of the courts to their common law function. From a series of lectures given by Calabresi as part of The Oliver Wendell Holmes Lectures delivered at Harvard Law School in March 1977.

He has produced a monograph that in its quality, timeliness and provocativeness is likely to stand alongside the seminal works of Ronald Dworkin and Grant Gilmore.

Allan C. Hutchinson and Derek Morgan
82 *Columbia Law Review* 1752 1982

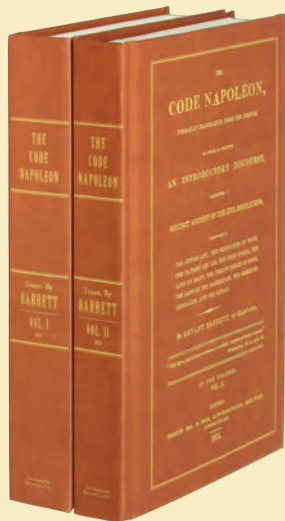
GUIDO CALABRESI [1932-] is Sterling Emeritus Professor of Law and Professorial Lecturer in Law at Yale Law School. He was Dean of Yale Law School from 1985-1994, and was appointed United States Circuit Judge in 1994. He is also the author of *The Costs of Accidents* (1970), *Tragic Choices* (1978) and *Ideals, Beliefs, Attitudes, and the Law* (1985).

Hardcover 2000 ISBN 978-1-58477-040-4
\$35.

The Code Napoleon

A comprehensive reformation and codification of the French civil laws, the Code Napoleon was renamed the Civil Code after the Bourbon restoration, and is still in force. It has served as the model for the legal codes of more than twenty nations throughout the world. The French Revolution overturned many of the hundreds of codes of law that had prevailed from ancient times, and added more than 14,000 pieces of legislation. After the National Convention and Directory failed in five attempts to organize this unwieldy mass, Napoleon appointed a commission to draft the new Civil Code. It was enacted in March 21, 1804, after a three year period of 87 sessions. It embodies a typically Napoleonic mix of liberalism and conservatism. Most of the freedoms won by the revolution, such as equality before the law, freedom of religion and the abolition of feudalism were preserved. At the same time, the Code reinforced patriarchal power by making the husband the ruler of the household.

First English Translation of the Code Napoleon, With an Influential Introduction



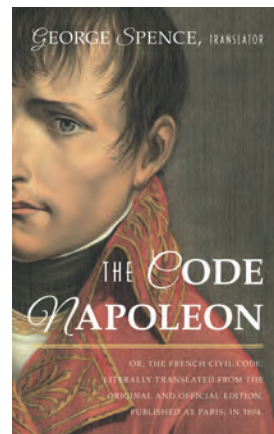
**The Code Napoleon,
Verbally Translated From the French
To Which is Prefixed an Introductory Discourse,
Containing a Succinct Account of the Civil
Regulations, Comprised in the Jewish Law, the
Ordinances of Menu, the Ta Tsing Leu Lee, the
Zend Avesta, the Laws of Solon, the Twelve
Tables of Rome, the Laws of the Barbarians, the
Assises of Jerusalem, and the Koran**

Bryant Barrett, Translator

Originally published: London: W. Reed, 1811
Two volumes. xiv, cccxciii, [iii], 146, [errata 2]; [ii], [147]-575,
[errata 2] pp.

Reprint of the first English edition. Bryant Barrett was an English attorney and member of Gray's Inn. His superb translation is noteworthy in part because it was published the year the Code was enacted. As such, it has the advantage of being in a style of English that is an idiomatic contemporary to the original French. Many scholars believe that this is the finest translation of the Code. Indeed, they have found it to be more accurate than the official Louisiana edition. The philological basis of his 393-page introduction had a profound influence on the subsequent development of classical British legal ethnography. Barrett's index, which follows the style of English lawyer's common-place books and abridgments, is a thorough guide to the Code.

2 Vols. Hardcover 2004, 2015 ISBN 978-1-58477-381-8
\$95.



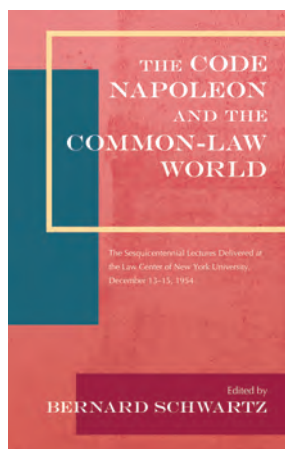
**The Code Napoleon
Or, the French Civil Code.
Literally Translated from the Original
and Official Edition, Published at
Paris, in 1804, by a Barrister of the
Inner Temple**

[George Spence, Translator]

Originally published: London: Printed for Charles
Hunter, Law Bookseller, 1824. xix, 627 pp.

Reprint of the 2nd English edition. According
to the *Dictionary of National Biography*,
this work was translated by George Spence
[1787-1850], an English jurist and Barrister
of the Inner Temple. *DNB* XVIII:743.

Hardcover 2004 ISBN 978-1-58477-375-7
\$39.95



The Code Napoleon and the Common-Law World

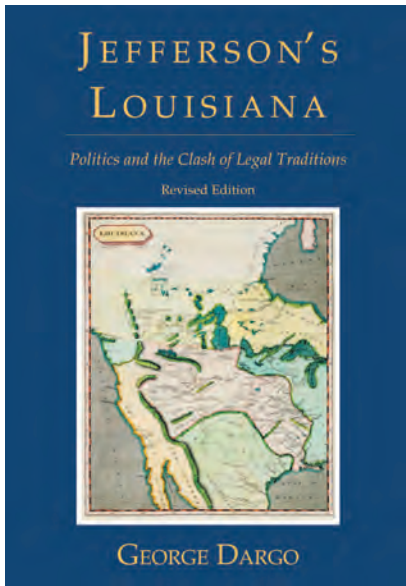
The Sesquicentennial Lectures Delivered at The Law Center of New York University
December 13-15, 1954

Bernard Schwartz, Editor

Originally published: New York: New York University Press, 1956. x, 438 pp.

The papers delivered by participants in the conference sponsored by the New York University Institute of Comparative Law to honor the 150th anniversary of the French Civil Code, which was the largest public celebration of the event in the legal world. The papers deal with the influence of the Code upon common-law countries in their efforts to manage statute and case law and gives examples of modern attempts at restatement of the law and uniform state laws as examples of the effect of the Code's coherence and logic.

Hardcover 1998 ISBN 978-1-886363-59-5
\$49.95



Jefferson's Louisiana
Politics and the Clash of Legal Traditions
Revised Edition

George Dargo

Clark, NJ: The Lawbook Exchange, Ltd., 2009
xxxvi, 331 pp.

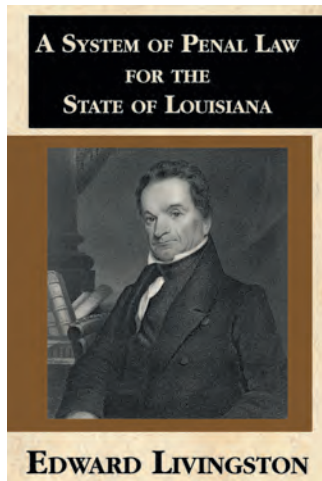
. . . among the finest volumes I have been associated with. The issues are complex both legally and politically, and Dargo's accomplishment is to recognize that the legal could not (and should not) be disentangled from the political. . . . The book was, and is, a triumph of historical scholarship, just as compelling in this revised edition in 2009 as it was when first published in 1975. . . . His new Introduction is the best guide I know of to the complicated world of late eighteenth- and early nineteenth-century Louisiana law.

Stanley N. Katz

Director, Center for Arts and Cultural Policy Studies,
Woodrow Wilson School, Princeton University,
Editor in Chief, *Oxford International Encyclopedia of
Legal History*

Hardcover 2009 ISBN 978-1-61619-020-0
\$49.95
Paperback 2009 ISBN 978-1-61619-021-7
\$39.95

Livingston's Influential Penal Code



A System of Penal Law, for the State of Louisiana

Consisting of A Code of Crimes and Punishments, A Code of Procedure, A Code of Evidence, A Code of Reform and Prison Discipline, A Book of Definitions. Prepared Under the Authority of a Law of the Said State. To Which are Prefixed a Preliminary Report on the Plan of a Penal Code, and Introductory Reports to the Several Codes Embraced in the System of Penal Law

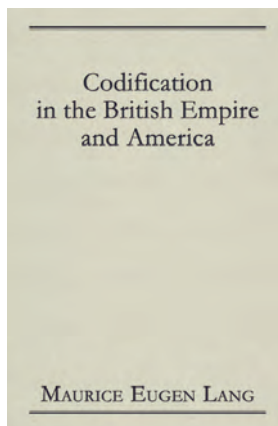
Edward Livingston

Originally published: Philadelphia: James Kay, Jun. & Brother, 1833
v, 745 pp.

A comprehensive system of criminal law which, while not adopted in the United States, is still influential today because it is the first complete penal code built on Jeremy Bentham's principles of codification. Hicks marvels at the scope of this code and notes that Bentham, Hugo, Lafayette, Story, Marshall, Madison, Kent and Jefferson were compelled by "the most comprehensive and enlightened system of criminal law that has ever been presented to the world." Smith. *Columbia Law Review* 2:32.

From a penal standpoint the code is important as well not only in terms of its completeness and order, but from its perspective of the advancement of crime prevention over punishment. Livingston [1764-1836] was a senator from Louisiana and later a member of Andrew Jackson's cabinet.

Hardcover 1999, 2010 ISBN 978-1-886363-83-0
\$39.95
Paperback 2010 ISBN 978-1-61619-073-6
\$29.95



Codification in the British Empire and America

Maurice Eugen Lang

Originally published: Amsterdam: H.J. Paris, 1924
[xiv], 204 pp.

Lang analyzes efforts made in the United Kingdom and the United States to replace or modify the common law with codes since the origins of codification in the nineteenth century. Lang is especially interested in the tension between written codes, which are characteristic of continental law, and the common law, which is grounded in custom. Since its publication in 1924, this book has been cited often in articles dealing with codes and comparative law.

Hardcover 2005 ISBN 978-1-58477-620-8
\$39.95



New York Field Codes Series 1850-1865

- Vol. I.** The Code of Civil Procedure of the State of New-York, Reported Complete by the Commissioners on Practice and Pleadings. 1850
- Vol. II.** The Code of Criminal Procedure of the State of New York, Reported Complete by the Commissioners on Practice and Pleadings. 1850
- Vol. III.** The Civil Code of the State of New York, Reported Complete by the Commissioners of the Code. 1865
- Vol. IV.** The Penal Code of the State of New York, Reported Complete by the Commissioners of the Code. 1865
- Vol. V.** The Political Code of the State of New York, Reported Complete by the Commissioners of the Code. 1860

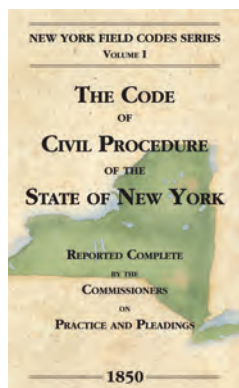
Originally published: Albany: Weed, Parsons & Co., 1850, 1860, 1865
5 Vols. x, xcvi, 791; x, liii, 486; x, cxii, 776; x, lxxix, 406, clxxvii; x, xlvii, 607 pp.

Hardcover 1998, 2011
ISBN 978-1-886363-40-3
\$295.

With a new General Introduction to the Series by Michael Weber

These five volumes contain the complete texts of the law codes drafted for New York State by David Dudley Field and his colleagues during the years 1847 to 1865. They include Field's two procedural codes and three substantive codes. In 1847 the New York state legislature established two committees, one to "reduce into a written and systematic code the whole body of the law of this state," another to "revise, reform, simplify and abridge the rules and practice, pleadings, forms, and proceedings of the courts of record of this State." Both included David Dudley Field, a leading proponent of codification. These committees produced codes of civil and criminal procedure in 1850, a political code in 1860 and civil and penal codes in 1865. All of these were written for the most part by Field. Popularly known as the Field Codes, they were very influential, both in the United States and internationally.

DAVID DUDLEY FIELD [1805–1894] was the leading American proponent of codification during the 19th century. He was the son of the Rev. David Dudley Field, a distinguished clergyman and author, and the brother of Cyrus Field, the financier who laid the first telegraph cable across the Atlantic Ocean, Stephen Field, Chief Justice of the California Supreme Court and Associate Justice of the U.S. Supreme Court, and Henry Field, a notable clergyman. A graduate of Williams College, he settled in New York City, where he studied law, was admitted to the bar and rapidly won a high position in his profession. Originally a Free-Soil Democrat, he played an important role in the establishment of the Republican Party in New York and supported the Lincoln administration throughout the Civil War. He returned to the Democratic Party in 1876, and served in the U.S. House of Representatives from January to March 1877, filling the unexpired term of Smith Ely, who had been elected mayor of New York City.

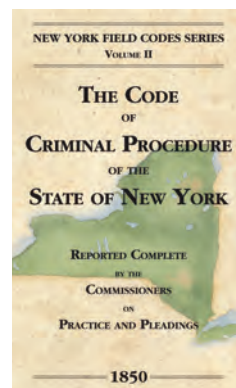


Hardcover 1998, 2011
ISBN 978-1-886363-34-2
\$65.

The Code of Civil Procedure of the State of New-York
Reported Complete by the Commissioners on Practice and Pleadings. 1850

Originally published: Albany: Weed, Parsons & Co., 1850
x, xcvi, 791 pp.

Volume I

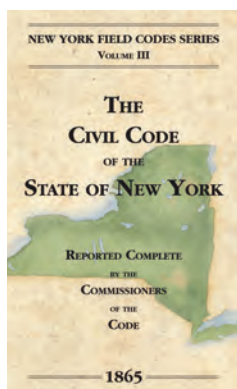


Hardcover 1998, 2011
ISBN 978-1-886363-35-9
\$39.95

The Code of Criminal Procedure of the State of New York
Reported Complete by the Commissioners on Practice and Pleadings. 1850

Originally published: Albany: Weed, Parsons & Co., 1850
x, liii, 486 pp.

Volume II

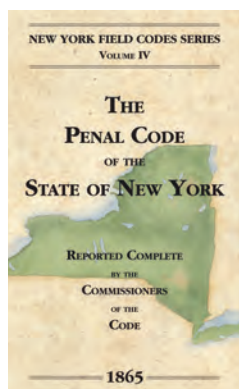


Hardcover 1998, 2011
ISBN 978-1-886363-38-0
\$65.

The Civil Code of the State of New York
Reported Complete by the Commissioners of the Code. 1865

Originally published: Albany: Weed, Parsons & Co., 1865
x, cxii, 776 pp.

Volume III

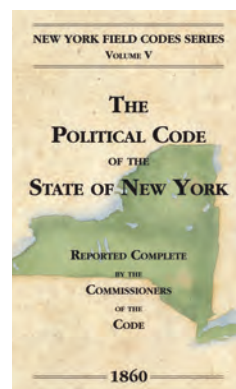


Hardcover 1998, 2011
ISBN 978-1-886363-36-6
\$49.95

The Penal Code of the State of New York
Reported Complete by the Commissioners of the Code. 1865

Originally published: Albany: Weed, Parsons & Co., 1865
x, lxxix, 406, clxxvii pp.

Volume IV

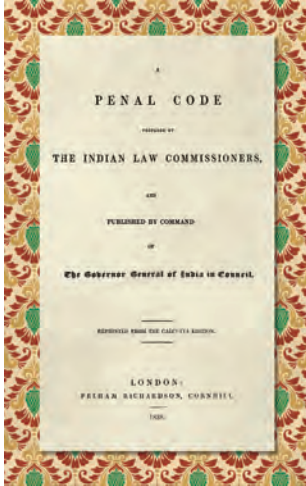


Hardcover 1998, 2011
ISBN 978-1-886363-37-3
\$49.95

The Political Code of the State of New York. 1860

Originally published: Albany: Weed, Parsons & Co., 1860
x, xlvii, 607 pp.

Volume V



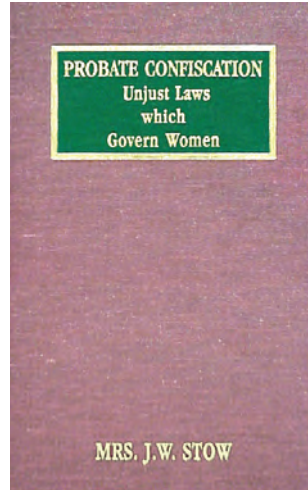
A Penal Code Prepared by the Indian Law Commissioners
 And Published by Command of the Governor General of India in Council

Thomas Babington Macaulay

Originally published: London: Pelham Richardson, Cornhill, 1838
 viii, 138 pp.

Considered to be one of the greatest codes of law ever written, this important code shows the practical influence of Bentham. At the time of its drafting, the dominant East India Company's regulations conflicted with Muslim and Hindu law, and the common law itself, providing a chaotic landscape ripe for Macaulay's order and clarity. Macaulay [1800-1859], a British colonialist, member of Parliament and author of many renowned works including the History of England, was president of the Indian Law Commission and composed most of the code himself. This volume is a reprint of the London edition that was reprinted from the Calcutta edition of the original text of the Penal Code as issued by the Indian Law Commission, October 14, 1837.

Hardcover 2002 ISBN 978-1-58477-018-3 \$23.95



Probate Confiscation
 Unjust Laws which Govern Women
 Fourth edition revised and enlarged

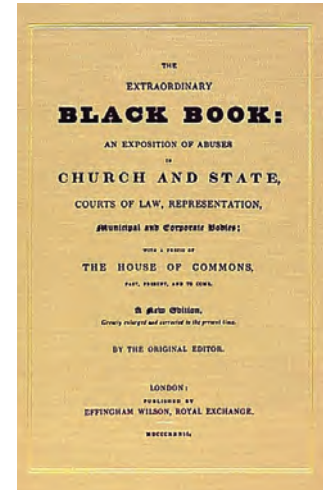
J. W. Stow

Originally published: [n.p.]: Printed and sold by the author, 1879
 [irregular pagination] 381, 34, 288-301 pp.

Printed for the author and sold on her lecture tours throughout the United States in an effort to enlighten citizens of those states and demand repeal of probate laws in each state.

Mrs. J.W. Stow [d.1902], returned from a trip abroad to find that her husband, a prominent San Franciscan, had passed away. Although her husband was considered to be quite wealthy, Mrs. Stow found herself nearly penniless. Here she vigorously describes her dealings with the San Francisco Probate Court, and attempts to expose the injustice of the probate system. A fascinating source for scholars of women's history and legal history alike, the volume is a passionate and insightful first-hand account of the legal system as it was experienced by women in the United States in the latter quarter of the nineteenth-century, as well as a well-informed feminist legal tract calling for economic justice and property rights for women and widows and their children.

Hardcover 2003 ISBN 978-1-58477-340-5 \$29.95



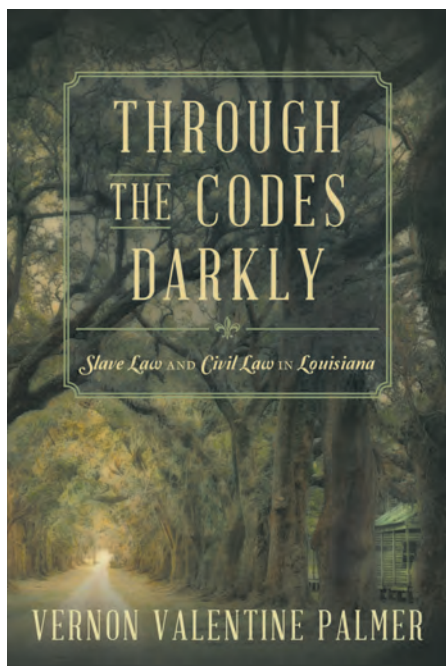
The Extraordinary Black Book
 An Exposition of Abuses in Church and State, Courts of Law, Representation, Municipal and Corporate Bodies; With a Precis of the House of Commons, Past, Present, and to Come. A New Edition, Greatly Enlarged and Corrected to the Present Time, by the Original Editor

John Wade
 [Compiler and Editor]

Originally published: London: Published by Effingham Wilson, 1832. xxxii, 683 pp.

Especially significant because it had a direct influence on legislation, this "Bible of the Reformers" is a model of investigatory pamphleteering in the cause of representative democracy. The long struggle to transform Great Britain into a modern state was effected primarily through the gradual expansion of the electorate, which was accomplished through the Reform Acts of the nineteenth and twentieth centuries. The campaign to transform government by weaning power from traditional loci was conducted through a mass of books, pamphlets and other printed matter. *The Extraordinary Black Book*, which went through several editions between 1820 and 1832, was the most important of these.

Hardcover 2004 ISBN 978-1-58477-362-7 \$35.



Through the Codes Darkly Slave Law and Civil Law in Louisiana

Vernon Valentine Palmer

Clark, NJ: The Lawbook Exchange, Ltd.
xvi, 196 pp.

When it comes to demystifying slave law in Louisiana, Vernon Palmer is practically peerless. It's probably because he is equally comfortable in the weeds of lived experience as he is poring over the pages of classical learning. These masterful essays on the Code Noir's origins, plus Louisiana's 150-year interplay between custom and legal practice, belong on the shelf of anyone with the faintest curiosity about human bondage and the laws fashioned to make it work.

LAWRENCE POWELL

Professor Emeritus, Department of History, Tulane University

This fascinating study offers:

- an examination of the complex French, Spanish, Roman and American heritage of Louisiana's law of slavery and its codification
- a profile of the first effort in modern history to integrate slavery into a European-style civil code, the 1808 Digest of Orleans
- a trailblazing study of the unwritten laws of slavery and the legal impact of customs and practices developing outside of the Codes
- an analysis that overturns the previous scholarly view that Roman law was the model for the Code Noir of 1685 - a new unabridged translation (by Palmer) of the Code Noir of 1724 with the original French text on facing pages.

VERNON VALENTINE PALMER is the Thomas Pickles Professor of Law and Co-Director of the Eason Weinmann Center for Comparative Law at Tulane University. He is the author of more than forty books and articles, including *Mixed Jurisdictions Worldwide: The Third Legal Family* (2nd ed., Cambridge University Press, 2012), *Mixed Jurisdictions Compared: The Private Law of Louisiana and Scotland* (co-edited with Elspeth Reid) (Edinburgh University Press, 2009), *The Louisiana Civilian Experience: Critiques of Codification in a Mixed Jurisdiction* (Carolina Academic Press, 2005), *Strict Liability in Europe* (co-edited with Franz Werro)(Carolina Academic Press 2004), *Pure Economic Loss in Europe* (co-edited with Mauro Bussani) (Cambridge University Press 2003), *Louisiana: Microcosm of a Mixed Jurisdiction* (Carolina Academic Press, 1999), and *The Paths to Privity: The History of Third Party Beneficiary Contracts at English Law* (Austin & Winfield, 1992, reprinted by Lawbook Exchange, 2006).

Hardcover 2012 ISBN 978-1-61619-311-9
\$69.95

Paperback 2012 ISBN 978-1-61619-326-3
\$49.95

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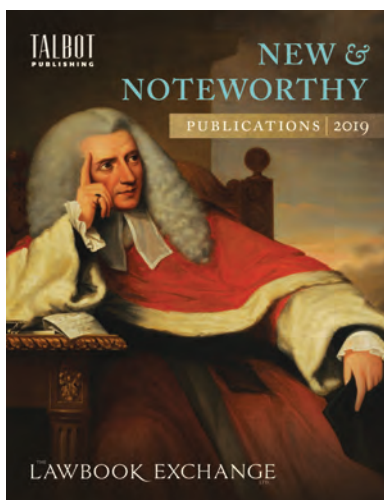
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