

# The Influence of French, Spanish, and English Legal Traditions on Early Mental Health Proceedings in Louisiana

José M. Peña, MD, Robert Franklin, MD, John W. Thompson, Jr, MD, Frank Minyard, MD, and Cynthia Carbin, MPH

Unlike other jurisdictions in the United States where the basis of the law can be traced more exclusively to the common law of England, the legal system in Louisiana also has origins in the laws of France and Spain. In this article, the authors describe the laws and procedures that developed early in Louisiana's history for the involuntary care and civil commitment of the mentally ill, focusing on the laws that were passed after the American takeover in 1803.

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There is such a thing in this state of Louisiana as the Napoleonic code. . . —Stanley Kowalski to Blanche DuBois in *A Streetcar Named Desire*<sup>1</sup>

On December 20, 1803, the Americans purchased Louisiana from the French and were confronted with the difficult task of forging an American state from a colonial society that was deeply rooted in French and Spanish legal traditions as the basis for its governance.<sup>2–4</sup> Half a century earlier, the transfer of power from France to Spain had been met with much dismay by the French Creoles in New Orleans. By the early 1800s, the cultural orientation of much of the established population remained French, and New Orleans was again confronted by a transfer of authority to yet another “foreign” country. The Americans, for their part, were intent on becoming the new and dominant economic and political force. However, the system of laws that developed in the years that followed was influenced by Louisiana’s French and Spanish heritage.

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Dr. Peña is Professor, Department of Psychiatry and Neurology, and Tulane University School of Medicine, New Orleans, LA. Dr. Franklin is Clinical Associate Professor, Department of Psychiatry, University of New Mexico, Albuquerque, NM. Dr. Thompson is Director, Division of Forensic Neuropsychiatry, Tulane University School of Medicine, New Orleans, LA. Dr. Minyard is Coroner, Parish of Orleans, New Orleans, LA. Ms. Carbin earned an MPH from the Department of International Health and Development, Tulane School of Public Health and Tropical Medicine, New Orleans, LA. Address correspondence to: José M. Peña, MD, Department of Psychiatry and Neurology, SL28, Tulane University School of Medicine, 1430 Tulane Avenue, New Orleans, LA 70112. E-mail: pena@tulane.edu

For this discussion, the term “civil,” when referring to the process for involuntary hospitalization and commitment, is used to distinguish these procedures from criminal proceedings. Civil commitment pertains to situations in which the individual has not been charged with a crime, but is confined as an exercise of the state’s police authority. However, the use of the term civil in civil commitment should also be distinguished from its use in reference to the Louisiana Civil Code, where the separate process for interdiction and the procedures for adjudicating competency are described.<sup>5</sup> In this second context, the term civil refers to the origins of the Louisiana Civil Code in the civil law of Rome and, more directly, in the civil laws of those countries in continental Europe that derived their systems of jurisprudence from Roman law.<sup>6,7</sup> In this context also, the term civil law is used in contradistinction to the term “common law”—the latter term referring to the separate system of jurisprudence and law that developed in England.<sup>8,9</sup> These different uses of the term civil are important to understand in Louisiana because, in addition to the usual distinction between civil and criminal law, a further historical distinction is made among civil laws between those that were derived from the civil laws of France and Spain, which were in force before the Americans came to power, and those that were passed after the American presence, when Louisiana law began to be influenced by English and American common law precedents.

## Culture Wars

When the first American Governor, William C. C. Claiborne, assumed office in Louisiana in 1803, his intent was to align Louisiana's legal system with the remainder of the United States by replacing the colony's civil laws with a legal system grounded in the common law tradition of England.<sup>10</sup> His efforts met with staunch resistance and ignited a political struggle that would last for more than 2 years between the governor and his allies, who advocated the common law, and the French Creoles, who wanted to preserve their established system of civil laws.

This was not the first time that the Creoles had resisted a transition of power. In 1718, 29 years after LaSalle claimed the Mississippi River valley for France, the colony in New Orleans was established by the French explorer Bienville. It remained a French possession until 1762, when in a secret agreement the French king, Louis XV, presented Charles III of Spain with the "Isle of Orleans" and most of the Louisiana territory as a gift of gratitude for Spain's support of the French against the British in the Seven Years War. This secret exchange was not announced until after the treaty of Paris was signed in 1763, and the news was received with shock and disappointment by the Creoles in New Orleans who remained French in their cultural orientation and political sympathies. Spain's initial attempts to take control were rebuffed. In response, Charles III instructed Alejandro O'Reilly, an Irish mercenary in the employ of the Spanish Crown, to put down the opposition. O'Reilly arrived in New Orleans in 1769, promptly jailed or executed the leaders of the resistance, proclaimed that French rule had ceased, and promulgated an abridged version of Spanish laws as the new rule of law in the land.<sup>11</sup> It was not until 1803 that Louisiana again came under French control, and then only for 20 days as part of Napoleon's plan to sell the territory to the Americans. It has been suggested that in the intervening years the transition from French to Spanish rule was eased by the similarity in the laws of those two powers and their shared heritage in Roman law. It has also been noted that although the substance of the law was amended by the Spaniards, court procedures, particularly in civil matters, were largely left untouched and allowed the French to hold stubbornly to their already established process for adjudicating cases.<sup>7,12,13</sup>

By the time of the American takeover, the French cultural orientation of the population in Louisiana had been further strengthened by several groups of immigrant French who settled in New Orleans during the late 1700s and early 1800s. These included European French, fleeing the Revolution of 1789, as well as subsequent waves of immigrants leaving France after Napoleon's coup d'état. There was also a large influx of French immigrants from Saint Domingue, the western half of the island of Hispaniola, who were fleeing the slave revolts that began in that country in 1791.<sup>14</sup>

The political struggle between French and American factions in Louisiana appeared to reach an impasse in 1806 when the General Assembly of the Territory of Orleans, made up mostly of Frenchmen, attempted to pass an act declaring the older civil laws still to be in force. Claiborne vetoed it. In response, the Assembly issued a "Manifesto" dissolving its session and declaring both houses of the legislature extraneous to the process of government in the new territory, since the American governor seemed determined to use his veto power to "reign alone" (Ref. 15, p 64). Nevertheless, and despite continued acrimony and mutual suspicion, a compromise emerged shortly afterward. In an act proposed by the Legislative Assembly, two lawyers, Louis Moreau-Lislet and James Brown, were commissioned to draft a code of civil laws for the newly established American territory. Moreau-Lislet was a French immigrant from Saint Domingue who had settled in Louisiana in 1805, and Brown was an American. It was conceded that the code should be written in both French and English and that it would be based on the civil laws that were in force before the American takeover.<sup>16</sup> To everyone's surprise, Claiborne signed the act in an apparent gesture of reconciliation. This first civil code was adopted in 1808.<sup>17</sup>

## Vive la Différence

An important factor motivating the compilation of a civil code was the need to ensure that the laws of the new territory, although based on French, Spanish, and Roman precedents, did not conflict with the Constitution of the United States. There also was interest in drawing together the laws that were in force into a single work that jurists could be guided by, eliminating the need to refer to multiple books written in different languages.<sup>7</sup> Achieving these goals with as little disruption as possible to the continued

administration of the territory was a primary concern. However, confusion continued to reign in the courts, even after the Code of 1808 was adopted. Martin<sup>18</sup> describes the process that prevailed in jury trials:

Courts of Justice were furnished with interpreters, of the French, Spanish and English languages; these translated the evidence and the charge of the court, when necessary, but not the arguments of the counsel. The case was often opened in the English language, and then the jurymen, who did not understand the counsel, were indulged to leave to withdraw from the box into the gallery. The defense, being in French, was recalled and the indulgence shown to them was extended to their companions, who were strangers to the French language. All went together into the jury-room; each contending the argument he had listened to was conclusive, and they finally agreed on a verdict in the best manner they could [Ref. 18, pp 344–5].

Confusion also continued regarding what constituted the substantive law. Many had thought that the new code would serve as a common point of departure for the adjudication of civil cases in Louisiana, where the legal community would now increasingly include jurists with common law training in addition to those who had been trained in the civil law. However, it became clear that whenever the articles of the civil code did not specifically address or resolve an issue before the court, attorneys and judges continued to rely on the older laws and on precedents that had prevailed before passage of the new code. The situation culminated on July 17, 1817, in the case of *Cottin v. Cottin*,<sup>19</sup> when the Supreme Court of Louisiana held that the code was only a “digest” and that the older laws were still in effect wherever they were not specifically repealed or in conflict with the Code of 1808.

This was an unambiguous revival of the older system of civil laws and it prompted the legislature to order a revision of the code, with the specific instruction that any of the laws that were still in force and had not been included in the Code of 1808 should now be added.<sup>20</sup> The frustrated intentions of those who had thought the problem was resolved in 1808 were summarized by the three jurists who were now commissioned to revise the code:

. . . [T]he principal Object the Legislature had in view, was to provide a remedy for the existing evil, of being obliged in many Cases to seek for our Laws in an indigested mass of ancient edicts and Statutes, decisions imperfectly recorded, and in contradictory opinions of Jurists; the whole rendered more obscure, by the heavy attempts of commentators to explain them; an evil magnified by the circumstance, that many of these Laws must be

studied in languages not generally understood by the people, who are governed by their provisions [Ref. 21, p LXXXV].

The legislature’s frustration also may have been stimulated by the fact that the attorney in *Cottin v. Cottin*, who successfully argued that the Code of 1808 did not abrogate the older system of civil laws, was Moreau-Lislet himself. The opposing counsel was Edward Livingston, a lawyer of common law training who migrated to Louisiana in 1804,<sup>7</sup> and the Supreme Court Justice handing down the judgment was Pierre Derbigny, an émigré during the French Revolution of 1789.<sup>22</sup> Some legal scholars have questioned Louis Moreau-Lislet’s motives and pointed out that many of the articles of the Code of 1808 appear to be a verbatim or near-verbatim duplication of articles in the early draft of the *Code Napoléon*, which was then available. They suggested that this itself was an evasion of the legislature’s original instruction that the code be based on the laws that were in force, because the substantive law of the territory at the time of the American takeover was in fact Spanish.<sup>6,23,24</sup> Pointing to differences between the texts of the *Code Napoléon* and the Louisiana Code, and noting the similarities between Spanish and French civil laws, others argue that the *Code Napoléon* merely served as an available and convenient outline, which was later modified.<sup>25</sup>

In any case, the legislature now reappointed Moreau-Lislet, along with Livingston and Derbigny, to correct the persistent “evil” by revising the Code of 1808. The revised code was adopted in 1825, and in 1828 (as a final attempt at definitive resolution), the legislature, by specific enactment, repealed, with one exception, all the civil laws that had been in force before passage of the revised code.<sup>26</sup> Even these efforts, however, were not completely successful in limiting the influence of the older laws to the articles of the civil code. The Supreme Court of Louisiana later held that the Act of 1828, repealing French, Spanish, and Roman laws, affected only:

. . . the positive written or statute laws of those nations: and only such as were introductory of a new rule, and not those which were merely declaratory—that the legislature did not intend to abrogate those principles of law which had been established or settled by the decisions of courts of justice [Ref. 27, pp 193,198].

This holding, although consistent with the principle of *stare decisis* in the common law, also had the consequence of preserving the influence of the older system of civil laws through precedents established

by the courts, an effect on Louisiana's jurisprudence that is felt to this day.

It was in the context of these cultural and political crosscurrents that the earliest laws in Louisiana, including those addressing the problems of the mentally ill, were drafted and adopted.

## Two Sets of Procedures

From an early time in the state's history, Louisiana law provided two separate procedures for the involuntary care of the mentally ill.<sup>28</sup> The first was contained in the civil code, which specified the steps to be followed in the adjudication of competency. The process for divesting an individual judged to be incompetent of his civil rights is referred to in the civil code as "interdiction." The appointed guardian is the "curator." Since the adoption of the first civil code in 1808, this has been a *de jure* process requiring a formal judgment regarding the subject's mental state. As already noted, the Louisiana Civil Code was derived from French and Spanish laws, including *Las Siete Partidas* of Spain and the *Code Napoléon*—an early version of which was available to the jurists who drafted the first Louisiana Code. The laws of France and Spain, in turn, had direct antecedents in the civil law of Rome.<sup>6,7</sup> Many of the precepts in the articles of the civil code, including those that dealt with the mentally ill, had precedents in these ancient sources.

The second set of procedures are not found in the civil code but instead developed through early state statutes<sup>30</sup> and municipal ordinances.<sup>31</sup> These early laws authorized the detention and institutionalization of the mentally ill and represented the antecedents of modern mental health laws regulating involuntary hospitalization and civil commitment. It is thought that in the state of Louisiana, as is the case in all other jurisdictions in the United States, civil commitment laws originated from English common law precedents.<sup>32</sup> However, there is also evidence that unlike other jurisdictions, the earliest laws for detention and commitment of the mentally ill in Louisiana had origins in French, Spanish, and Roman precedents.<sup>29</sup>

## Interdiction and Civil Commitment

The separation in Louisiana's laws between those governing the process of interdiction and those governing civil commitment coincides with the important legal distinction (made in many jurisdictions

throughout the United States) between the process for determining a person's competence, and the procedures and criteria for involuntary hospitalization. Competence refers to an individual's mental capacity to function in a specific area—such as the ability to understand and enter into contracts, or the ability to manage one's estate. A finding of incompetence can have the consequence of limiting the person's legal rights in the area of functioning that is impaired by the person's mental condition. The process of interdiction is an extension of a competency hearing in which the subject of the hearing is found not to have the mental capacity (not competent) to manage his or her own person or affairs and therefore requires the appointment of a curator (guardian). In contrast, involuntary hospitalization, although it involves compulsory detention and confinement, does not alter the person's civil or property rights. Furthermore, involuntary hospitalization, having none of the civil effects of interdiction, has never required a formal judgment for reversal or for release of the mentally ill person once the "mental derangement" has ended.<sup>28</sup>

Historically, this distinction between civil commitment and competency proceedings was based, at least in part, on the recognition that some forms of mental derangement were temporary and required neither a permanent alteration in the person's legal rights nor arrangements for his ongoing care. For example, Blackstone describes the distinction in English law between idiots and lunatics: idiots were considered to have a permanent condition, whereas lunatics were thought to have "lucid intervals: sometimes enjoying their senses and sometimes not." In cases of "occasional insanity" the individual would be temporarily confined in "hopes of a speedy restitution of reason" (Ref. 33, pp 298–99).

## Competency Proceedings

The articles in the Civil Code of 1808 that addressed questions of mental illness were primarily concerned with competency proceedings and how a person's mental capacity might affect personal or property rights. Article 9 contains one of the earliest legal definitions of insanity in Louisiana:

Persons of insane mind are those who do not enjoy the exercise and use of reason, after they have arrived at the age at which they ought, according to nature, to possess it, whether the defect results from nature or accident. This defect disqualifies those who are subject to it, from contracting any species of engage-

ment, or from managing their own estates, which are consequently placed under the direction of a curator [Ref. 34, p 17].

Les insensés sont ceux qui ne jouissent pas de l'usage de la raison, après l'âge où ils devraient l'avoir, soit que ce défaut provienne de la nature, ou de quelqu'accident. Ce défaut prive les personnes qui y sont sujettes, du droit de contracter aucune espèce d'engagement et d'administrer leurs propres biens qui sont en conséquence, placés sous l'administration d'un curateur [Ref. 34, p 17].

It is notable that this definition of insanity did not appear in the Napoleonic Code of 1804 but Batiza<sup>6</sup> identifies a similar article in the Projet of 1800—the early draft of the Napoleonic Code that was available to Louisiana jurists. Morrow<sup>29</sup> further identifies what may have been the earlier source for this legal definition of insanity in the work of the French jurist Domat.<sup>35</sup>

Article 6 contains one of the earliest references to the role of medical experts, specifying that in interdiction proceedings, physicians could be consulted by the judge regarding a person's mental condition:

The acts of imbecility, insanity or fury must be proved to the satisfaction of the judge that he may be enabled to pronounce the interdiction; and this proof may be established as well by written as by parole evidence. The judge may moreover interrogate or cause to be interrogated by any other person commissioned by him, for that purpose, the person whose interdiction is petitioned for, or cause such person to be examined by physicians or other skillful persons to obtain their report upon oath on the real situation of him who is stated to be of unsound mind [Ref. 34, pp 221–2].

Les faits de démence, d'imbécillité ou de fureur, doivent être prouvés à la satisfaction du juge, pour qu'il puisse prononcer l'interdiction, et cette preuve peut être faite tant par titres que par témoins, et le juge pourra en outre, s'il le croit nécessaire, interroger, soit par lui-même, ou par toute autre personne par lui commise à cet effet, celui dont on poursuit l'interdiction, ou le faire visiter par des médecins et autres personnes de l'art, à l'effet d'avoir leur rapport asservé sur son état [Ref. 34, pp 221–2].

The Code of 1808, in Article 24, also contains one of the first references to judicial commitment of the mentally ill, authorizing the parish (county) judge in interdiction proceedings to confine individuals in their own homes, in "bettering homes" or, if deemed to be dangerous, in "safe custody":

According to the symptoms of the disease, under which the person interdicted labors, and according to the amount of his estate, the judge may order that the interdicted person be attended in his own house, or that he be placed in a bettering house, or indeed if he be so deranged as to be dangerous, he may order him to be confined in safe custody [Ref. 34, pp 234–5].

Selon les caractères de la maladie dont l'interdit est atteint et suivant l'état de sa fortune, le juge doit ordonner qu'il sera traité

dans son domicile, ou qu'il sera placé dans une maison de santé; il peut même le faire mettre en lieu de sûreté, s'il est furieux [Ref. 34, pp 234–5].

This article in the Louisiana Code is an almost verbatim repetition of the corresponding article in the 1800 *Projet* of the *Code Napoléon*, except for the reference to "safe custody," where the French code instead specifies that the individual could be placed in an asylum, "dans un hospice" (Ref. 34, p 235). This difference is most likely related to the fact that asylums for the mentally ill had yet to be established in Louisiana. It is also significant that this early commitment procedure was operant only through the process of interdiction. That is, the justification for commitment was based on a finding of mental incapacity, not dangerousness, although the judge could consider the question of dangerousness when determining the place of confinement.

The common law of England also provided for the guardianship of the mentally ill. In England, these laws were based on the doctrine of *parens patriae*, in which the king was considered the conservator of his subjects. Pollock and Maitland<sup>36</sup> noted that by the reign of Edward I, "the king claims a wardship of the lands of natural fools, no matter of whom such lands may be holden" (Ref. 36, p 481), and describe how the king's emerging claims in this area came at the expense of the lords:

Edward I was told that by the law of Scotland the lord had the wardship of an idiot's land. But in England a different rule had been established, and this, as we think, by some statute or ordinance made in the last days of Henry III. If we have rightly read an obscure tale, Robert Walerand, a minister, justice and favorite of the king, procured this ordinance foreseeing that he must leave an idiot as his heir and desirous that his land should fall rather into the king's hand than into the hands of his lords. The king's right is distinctly stated in the document known as *Praerogativa Regis*, which we believe to come from the early years of Edward I. The same document seems to be the oldest that gives us any clear information about a wardship of lunatics [Ref. 36, p 481].

The laws that were developed in England for guardianship of the mentally ill were therefore similar in principle to those found in the civil laws of Rome and continental Europe.<sup>33</sup> Nevertheless, the procedures adopted in the Louisiana Civil Code were based on the latter, and were clearly derived from French and Spanish, rather than common law precedents.

The articles of the civil code have undergone important revisions since 1808, but they continue to govern competency proceedings in Louisiana. The

civil code, however, does not contain current laws on civil commitment and involuntary hospitalization, which instead are found in state statutes under the Louisiana Mental Health Law.<sup>37</sup>

## Civil Commitment

Current criteria for involuntary hospitalization in Louisiana are similar to those in other jurisdictions in the United States and are based on the determination that a person, because of his or her mental illness, represents a danger to self or others, or is gravely disabled.<sup>37</sup> The first state statute to establish a procedure for civil commitment outside the civil code and independent of the process for establishing competency was passed in 1840.<sup>38</sup> This new procedure replaced the older process for civil commitment that was contained in the civil code and that was only operant as part of a formal competency hearing. The 1840 statute allowed parish (county) judges to admit patients to a “lunatic asylum” that was opened in that same year at Charity Hospital in New Orleans. Morrow<sup>29</sup> reviews the history of these early commitment laws and notes that state funding for the New Orleans asylum was contingent on the hospital’s agreement to accept patients from all over the state, an arrangement that presaged future conflicts between state and local authorities over who would provide the resources for the care of the mentally ill. It was not until 1847 that an Act to establish the first free-standing state asylum in the town of Jackson, Louisiana, was passed by the legislature.<sup>39</sup> This Act transferred public responsibility (as well as funding) for the care of Louisiana’s mentally ill from the New Orleans asylum to the state asylum at Jackson. The 1847 Act also amended the 1840 statute on commitment, transferring the authority previously invested in parish judges to the newly established district judges, who would now commit patients from all over Louisiana to the new facility at Jackson. It is unlikely that these statutes on commitment in 1840 and 1847, passed after more than 30 years of American rule, were strongly influenced by French or Spanish laws. This supports the view that current state statutes on involuntary hospitalization and civil commitment in Louisiana had their origins in English common law precedents.<sup>32</sup> However, in New Orleans, the most populated area of the state, the need to address the problems of the mentally ill was recognized well before 1840.

## Furious Madmen

Historically, the rationale for the detention and confinement of the mentally ill developed in part from the perception that disturbed individuals ought to be sequestered for their own and the public’s safety. One of the earliest references to this process in Louisiana is found in the New Orleans Police Code of 1808:

Furious madmen found in the streets, shall be taken up and brought before the Mayor, or a Justice of Peace, who upon the proof of insanity, shall enjoin the nearest relation of the person attacked with that malady to keep him in good and secure custody; on penalty of being answerable for the mischief he may do. If a dangerous madman has no relations, he shall be placed in good and secure custody, in such place as the Mayor may judge proper, and he shall be maintained and clothed at the expense of the city [Ref. 31, pp 78, 80].

Les fous furieux trouvés dans les rues, seront arrêtés et conduits devant le Maire ou un Juge de paix, qui, après avoir constaté la démence par information, enjoindra au plus proche parent de la personne attaquée de cette maladie, d’en faire bonne et sûre garde, à peine de répondre des événemens. A défaut de parents, les fous dangereux seront mis sous bonne et sûre garde, dans tel endroit que le Maire jugera convenable, et ils seront nourris et vêtus aux frais de la Ville [Ref. 31, pp 79, 81].

It is not known if the procedure described in this early city ordinance reflects a municipal policing function that was already in place in New Orleans, preceding the American presence and subsequently adopted by the new city council. For example, the procedures instituted in 1769 by the Spanish governor O’Reilly authorized the police to apprehend individuals who were disturbing the peace or committing other offenses and bring them before one of two ordinary *alcaldes* who functioned as city judges (Ref. 11, p 11) (*alcalde* is also sometimes translated as “mayor” in Spanish). Procedures for the detention of individuals deemed to be a threat to the public order were therefore already well established in Louisiana during the period of Spanish rule. However, these procedures did not make specific mention of the mentally ill.

## English Laws

With regard to the specific question of the mentally ill, there were clear precedents in the common law of England for police action in situations in which a mentally disturbed person’s behavior was perceived to represent a public danger. Under the common law, the commission of a crime required both an illegal act and a “fixed design” or intent (Ref.

40, p 21). In Blackstone's words, "there must be both a will and an act" (Ref. 40, p 21). Because of this, the insane could be excused from "the guilt of crimes" due to their mental incapacity, which created a "deficiency in will . . . or vitiated understanding" (Ref. 40, p 21). However, because they could be excused for their actions, they could also be restrained:

In the case of absolute madmen, as they are not answerable for their actions, they should not be permitted the liberty of acting unless under proper control; and, in particular they ought not to be suffered to go loose, to the terror of the Queen's subjects. It was the doctrine of our ancient law, that persons deprived of their reason might be confined till they recovered their senses, without waiting for the forms of a commission or other special authority from the Crown; subsequently, by express enactment, persons discovered under circumstances denoting a derangement of mind, and a purpose of committing some indictable offense, might be apprehended and committed as a person suspected to be insane. And now constables, relieving officers and overseers of parishes are required to apprehend all persons wandering at large and deemed to be lunatics, and take them before a justice, when on due inquiry, they are sent to an asylum [Ref. 40, p 23].

By 1808, the Americans had been in power in Louisiana for 5 years and the common law had already been formally introduced into the laws of the new territory with passage of the Crimes Act of 1805.<sup>41</sup> This Act established the common law as the basis for all future criminal (as distinguished from civil) proceedings and legislation in Louisiana and specifically adopted the common law principle that in order for an illegal action to be considered a crime under the law, willful intent must accompany the illegal behavior. It also specified that mentally disturbed individuals, because of their defects in will could be pardoned from punishment. The Act also established the principle of preventive detention in cases where no crimes had been committed but where there was just cause to suspect that a breach of the peace would occur, although this section on preventive detention makes no specific mention of the mentally impaired.

Common law precedents for the detention of the mentally ill therefore may have been known by and may have influenced the drafters of the 1808 New Orleans Police Code ordinance cited earlier. However, the legal precedents for compulsory detention of the mentally ill who have not committed a crime but are confined as an extension of the state's interest in conserving the peace, are not unique to English or American systems of law. Morrow<sup>29</sup> argues that the procedure for detention of the mentally ill

adopted in the New Orleans Police Code of 1808 had Roman rather than Anglo-American origins. In support of this view, he notes that under Roman law, officials were required to confine *furiosi* (madmen) if their friends or family were unable to control them. There were also precedents in the laws of France and Spain that further suggest a civil law rather than a common law origin for this early city ordinance.

## French Precedents

In a discussion of the history of the laws regulating involuntary detention of the mentally ill in France, Castel<sup>42</sup> cites the following 18th century French police code ordinance that is strikingly similar to the New Orleans ordinance of 1808:

Those who have the misfortune to be attacked by these kinds of illness must be maintained by their relatives, or at the latter's expense, so that the public peace is not disturbed by these unfortunate people. When families are not capable of paying for their board and lodging, the officers entrusted with the maintenance of order must ensure that these categories of the sick are taken to hospitals or other places intended by the government to receive them. Relatives may be prosecuted to make good the damage wrought by persons who are mad, furibund or demented; but the action against them can only be a civil one [Ref. 42, pp 17–18].

Castel notes that before the French revolution, judicial and executive authorities shared responsibility for the involuntary confinement of the mentally ill. The most well developed judicial process was that of interdiction. This process was later adopted "practically in its entirety" by the *Code Napoléon* which, as we have noted, subsequently became an important source for similar procedures in the Louisiana Civil Code of 1808. A second procedure relied on executive rather than judicial authority and involved detention by "royal order" or "*lettre de cachet*." Castel explains as follows:

...[W]hen a mental defective disturbed the public order, the services of the Paris Lieutenant of Police, or in the provinces the Intendants, could request the king to issue an order for confinement. They could even take the insane person into custody, but provisional detention only became legal after the obtaining of the *lettre de cachet* [Ref. 42, pp 19–20].

Castel further notes that the retrospective legalization of "provisional detention" by obtaining a *lettre de cachet* occurred more in principle than in practice, and that peace officers and other administrators, as extensions of the executive authority, were frequently able to confine the mentally ill on their own initiative. After the revolution, and despite the prevalent

political aversion to preserving any practice that had been authorized by the “tyranny” of the king, these procedures endured and gained legitimacy as a question of public order and, in particular, as the need was recognized for a more rapid intervention than the cumbersome judicial process of interdiction.

The historical evidence provided by Castel indicates that legal precedents for police detention and hospitalization of the mentally ill, as a question of public safety, were not limited to English or American systems of law, and clearly existed in France by the late 1700s. These precedents were not only similar in principle, but also closely resembled the form and content of procedures adopted by the city of New Orleans in 1808.

### **Importance of the Family in Spanish and Roman Law**

An additional element in the New Orleans City Ordinance cited earlier is its emphasis on the family's accountability for the mentally ill person and the “mischief” he might do. Historically, both French and Spanish laws emphasized the responsibility of the family for the care of the mentally ill, and this emphasis was particularly strong in the laws of Spain.<sup>29</sup> It is found in *Las Siete Partidas*, which were among the laws of Spain that remained in force during and after the period of Spanish rule in Louisiana. The following article appears in the 1820 English-language translation of *Las Siete Partidas* by Louis Moreau-Lislet and Henry Carleton:

Every man or woman above the age of 10 years and six months, is capable of doing wrong or injury to another; for the ancient sages have conceived that after that age, every person ought to have the understanding to know when he injures another, unless he were a madman or lunatic, in which case, he will not be bound to make amends for any thing he may say or do, as he is ignorant of what he is doing, while deprived of his reason. But the nearest relations of such persons, or those who have the guardianship of them, must cause them to be taken care of, and guarded in such manner that they cannot wrong or injure any one, as we have prescribed in several laws of this book; and if they neglect to do so, they may be sued for the injury which such persons commit [Ref. 43, p 1179].

The emphasis on family responsibility found in this article of *Las Siete Partidas* is also found in the French police code ordinance cited previously. This similarity is probably due to the common heritage of French and Spanish laws in Roman law. In particular, specific reference is made to the family's potential civil liability. It is this aspect of this article in *Las Siete*

*Partidas* that most closely resembles the reference to family accountability that appears in the 1808 New Orleans Police Code, again suggesting a civil law rather than a common law origin for this early city ordinance.

### **Discussion**

Stanley Kowalski's warning to Blanche DuBois in *A Streetcar Named Desire*<sup>1</sup> evokes the popular misperception that Louisiana's laws were derived solely from the *Code Napoléon* or that they represent a “foreign” or idiosyncratic element among jurisdictions in the United States. Neither of these assumptions is completely true, and neither is true with regard to Louisiana's current mental health laws.

After 1805, with passage of the Crimes Act of that year, the common law became the basis for all future criminal law in the state. It was among the state's civil laws that the influence of the older colonial laws endured, and these included laws with Spanish as well as French origins.

Among Louisiana's current civil laws, the most enduring example of this French and Spanish influence is the Louisiana Civil Code. Despite numerous revisions since the first civil code was passed in 1808, the Louisiana Civil Code continues to include articles that govern competency proceedings and the appointment of guardians for mentally ill persons.

In 1808, there also were two procedures for civil commitment. The civil code authorized the judicial commitment of the mentally ill, but this process was operant only through a formal competency hearing. A second procedure authorized the emergency detention and summary commitment of the mentally ill to local facilities by city magistrates in New Orleans. This second procedure was contained in the New Orleans Police Code. The origins of both of these early commitment procedures can be traced to the civil law traditions of France and Spain and their antecedents in Roman Law. It was not until 1840 that state statutes established a new process for judicial commitment. This new process was separate from the adjudication of competency, and replaced the older procedure contained in the civil code. Modern commitment laws can be traced most directly to this 1840 statute, enacted after more than 30 years of American rule.

Despite their different origins, both civil law and common law traditions include the principle of public responsibility for the mentally ill. Both also ad-

dress the use of “public safety” as a rationale for protective custody and commitment. It is therefore likely that these similarities in principle facilitated convergence between Louisiana’s laws and the laws and procedures that developed for the care of the mentally ill in other jurisdictions. The increasing influence of the common law, as Louisiana became integrated as part of the United States, was also an important factor. Today, Louisiana’s mental health laws are similar to those in other states.

Nevertheless, the influence of French and Spanish legal traditions on Louisiana’s early laws for the care of the mentally ill is an important historical difference between Louisiana and other jurisdictions. It represents a unique chapter in the history of mental health laws in the United States—one that is largely unfamiliar to many legal scholars and practitioners interested in the history of psychiatry and the law. Our review of this history did not address how the competing cultural, political, or linguistic traditions that influenced the state’s early development might have affected the management of the mentally ill in practice. These remain important and interesting questions for future research.

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