Journal of Civil Law Studies

Volume 5
Issue 1 *200 Years of Statehood, 300 Years of Civil Law: New Perspectives on Louisiana's Multilingual Legal Experience*
October 2012

Article 6

10-1-2012

Making French Doctrine Accessible to the English-Speaking World: The Louisiana Translation Series

Alexandru-Daniel On

Follow this and additional works at: http://digitalcommons.law.lsu.edu/jcls

Part of the Civil Law Commons

Repository Citation
Alexandru-Daniel On, *Making French Doctrine Accessible to the English-Speaking World: The Louisiana Translation Series*, 5 J. Civ. L. Stud. (2012)
Available at: http://digitalcommons.law.lsu.edu/jcls/vol5/iss1/6

This Note is brought to you for free and open access by the Law Reviews and Journals at DigitalCommons @ LSU Law Center. It has been accepted for inclusion in Journal of Civil Law Studies by an authorized administrator of DigitalCommons @ LSU Law Center. For more information, please contact sarah.buras@law.lsu.edu.

MAKING FRENCH DOCTRINE ACCESSIBLE TO THE ENGLISH-SPEAKING WORLD: THE LOUISIANA TRANSLATION SERIES

Alexandru-Daniel On*

I. INTRODUCTION

Translation theoreticians have asserted that all communication is translation.[1] That means that language itself is a translation, from the non-verbal world into the world of signs, and therefore *translation* is in fact "translation for the second time".[2] That refers not only to language, but our gestures as well. We all had early special training in translation during our childhood, while playing *charades*.[3] Naturally, in a game of *charades*, the players that are more likely to guess the right words are usually the actor's friends, the ones that know him better. This childhood game is thus a first lesson of culture-dependent translation - just like legal translation. The better you know the object that you are mimicking and the better you know the persons that have to guess it, the more successful you will be in the game.

Legal translation possesses, however, a somewhat unique feature. In law, language is both the object studied and the means of analysis, which means that for a lawyer, language is not simply

---

* LL.M. candidate, Louisiana State University Law Center (2012), Research Assistant for Professor Olivier Moréteau. The author would like to thank Professor Olivier Moréteau and Professor Alain Levasseur for their support and comments and Jennifer Lane for her help in editing the material.

1. Eduardo Rotman, *The Inherent Problems of Legal Translation: Theoretical Aspects*, 6 IND. INT'L & COMP. L. REV. 187, 187 (1995-1996).

2. *Id.* at 187 n.1.

3. "Charades" is a word guessing game, where one player, who is given a specific word, is acting without using sounds or words, and the others must guess that word.

a medium, but also the "raw material" to be worked on.[4] It's still a game of *charades*, only a bit more complicated.

All translations accomplish a double transfer: a *strictly functional* transfer and a *cultural* transfer. For some legal translations the functional element is preponderant, as it is, for example, when translating a contract. Others, however, perform primarily a cultural transfer.

When translating doctrine, the cultural transfer is preponderant.

It is only logical then that the birthplace of most translations of major French doctrinal materials into English has been within the state of Louisiana, a state that is very close to the French *nomos*. In Louisiana, the French tradition was kept very much alive over the centuries, and the core of Louisiana's legal system, its private law, is of French and Spanish origin.[5] However, the process of translating French materials in order to make them accessible within the English-speaking world has never been solely Louisianan. French doctrine has been and is still appreciated worldwide for its intellectual strength, clarity and abstraction. That is why the works of Pothier,[6] Domat[7] or Gény[8] were translated into English prior to any Louisianan translation project.

---

4. Malcom Harvey, *What's so Special about Legal Translation?* (Jul. 12, 2012, 12:50 PM), http://id.erudit.org/iderudit/008007ar.

5. Though it is disputed if it is mainly of French origin, or Spanish [*see* Rodolfo Batiza, *The Louisiana Civil Code of* 1808*: Its Actual Sources and Present Relevance*, 46 TUL. L. REV. 4 (1971); Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 TUL. L. REV. 603 (1972); ALAIN LEVASSEUR, MOREAU LISLET: THE MAN BEHIND THE DIGEST OF 1808 170-206 (Claitor's Publishing Division 2008).

6. ROBERT J. POTHIER, A TREATISE ON OBLIGATIONS, CONSIDERED IN A MORAL AND LEGAL VIEW (N. C. Newbern trans., Martin and Ogden 1802, 2 v.); ROBERT J. POTHIER, A TREATISE ON THE CONTRACT OF SALE (L. S. Cushing trans., C.C. Little and 4. Brown 1839); ROBERT J. POTHIER, A TREATISE ON MARITIME CONTRACTS OF LETTING TO HIRE (Caleb Cushing trans., Cummings and Hilliard 1821); ROBERT J. POTHIER, A TREATISE ON THE CONTRACT OF PARTNERSHIP, WITH THE CIVIL CODE AND THE CODE OF COMMERCE RELATING TO THAT SUBJECT, IN THE SAME ORDER (Owen D. Tudor trans. with notes referring to the decisions of the English courts, Butterworks 1854).

7. JEAN DOMAT, THE CIVIL LAW IN ITS NATURAL ORDER (Cuther S. Cushing trans., Little, Brown & Co. 1853, 2 v.).

That being said, no one can doubt the fact that Louisiana's contribution to the process of making French doctrine accessible in English is simply astonishing.

The complete volumes of translations form a long, well-crafted and influential series, named the *Louisiana Translation Series*. This series covers major French treatises and monographs, and a few doctrinal excerpts, all bound in workable, well-organized and easy-to-use volumes, the most important of which have been cross-referenced with the Louisiana civil code in an annotated series.[9]

This translation work can be divided in two major categories: translations made under the tutelage of the Louisiana State Law Institute (Part II), and translations sponsored by the Center of Civil Law Studies (Part III).

II. TRANSLATIONS MADE UNDER THE TUTELAGE OF THE LOUISIANA STATE LAW INSTITUTE

The first category includes translations realized by the Louisiana State Law Institute[10] between 1959 and 1972, namely

---

8. FRANÇOIS GÉNY, MÉTHODE D'INTERPRÉTATION ET SOURCES EN DROIT PRIVÉ POSITIF §155-159, 169-176, *translated in* ERNEST BRUNCKEN & LAYTON B. REGISTER, SCIENCE OF LEGAL METHOD – SELECT ESSAYS 2-46 (Boston Book Co. 1917); François Gény, *La technique législative dans la Codification civile moderne* (à propos du Centenaire du Code civil), *translated in* BRUNCKEN & REGISTER, *id.* at 498-557.

9. WEST'S LOUISIANA STATUTES ANNOTATED, CIVIL CODE SERIES (1952, 17 vols.). The translations of Planiol and Aubry & Rau are the ones that can be cross-referenced with the annotated series.

10. The legislative charter of the Louisiana State Law Institute imposes upon it the responsibility of making available translations of civil law materials and commentaries in the interest of a better understanding of the civil law of Louisiana and the philosophy upon which it is based [LA. REV. STAT. § 24:204 A(7) (1950)]. Generally, the Institute was chartered, created and organized as an official advisory law revision commission, law reform agency and legal research agency for the state of Louisiana [LA. REV. STAT. § 24:201 (1950)], with the purpose of promoting and encouraging the clarification and simplification of the law of Louisiana and its better adaptation to present social needs, securing the better administration of justice, and carrying on scholarly legal research and scientific legal work [LA. REV. STAT. § 24:204 A (1950)]. *See also* William E. Crawford, *The Louisiana State Law Institute–History and Progress*, 45 LA. L. REV. 1077 (1985).

three magnificent projects covering: Planiol's *Traité élémentaire de droit civil,*[11] Gény's *Méthode d'interprétation et sources en droit privé positif*[12] and thereafter, in the *Civil Law Translations* series, complete volumes or substantial excerpts of Aubry & Rau's *Droit civil français*[13] and excerpts from the works of Carbonnier and Baudry-Lacantinerie & Tissier.[14]

Planiol and Ripert's *Traité élémentaire de droit civil* is the first translation of the series and, without a shadow of a doubt, the translation project that had the most substantial influence in the state of Louisiana,[15] and perhaps even elsewhere.[16] Written by

---

11. MARCEL PLANIOL, CIVIL LAW TREATISE (La. St. L. Inst. trans., West, 1958, 3 v.).

12. FRANÇOIS GÉNY, METHOD OF INTERPRETATION AND SOURCES OF PRIVATE POSITIVE LAW (La. St. L. Inst. trans., West, 1963).

13. CHARLES AUBRY & CHARLES RAU, 1 OBLIGATIONS (La. St. L. Inst. trans., West, 1965); AUBRY & RAU, 2 PROPERTY (La. St. L. Inst. trans., West 1966); AUBRY & RAU, 3 TESTAMENTARY SUCCESSIONS & GRATUITOUS DISPOSITIONS (La. St. L. Inst. trans., West 1969); AUBRY & RAU, 4 INTESTATE SUCCESSIONS (La. St. L. Inst. trans., West 1971); AUBRY & RAU, 5 PRESCRIPTION (La. St. L. Inst. trans., West 1972).

14. GABRIEL BAUDRY-LACANTINERIE, ALBERT-ANATOLE TISSIER & JEAN CARBONNIER, 5 PRESCRIPTION (La. St. L. Inst. trans., West 1972).

15. Planiol's treatise was used as authority in an unmatched number of cases. Some of the most important private law cases dealing with property or obligations were decided based on rules laid down and explained in this translation of Marcel Planiol's TRAITÉ ÉLÉMENTAIRE. Cases like Bartlett v. Calhoun, 412 So. 2d 597 (La. 1982), Gueno v. Medlenka, 238 La. 1081, 117 So. 2d 817 (1960) and Berlier v. A.P. Green Industries, 815 So. 2d 39 (La. 2002), are landmark cases and also teaching material in Louisiana universities, and in these cases excerpts from Planiol were absolutely decisive. *See also* Dainow, *The Planiol Treatise on the Civil Law: French and Louisiana Law for Comparative Study*, 10 AM. J. COMP. L. 175, 182 (1961). For the use of French doctrine and French Law in general, by federal courts and state courts, *see* Alain Levasseur, *The Use of Comparative Law by Courts*, 42 AM. J. COMP. L. SUPP. 41 (1994).

16. Proof of this vast influence is the decision to re-edit the series in 2005 by Hein (William S. Hein & Co., Inc., Buffalo) and the myriad of positive reviews: "I feel certain that this Treatise which has attained the stature of a classical work on law in France will be of immense benefit to American lawyers and to all those interested in the vital problem of comparative law today." Edouard Morot-Sir, Director of the Cultural Services of the French Embassy (1959), in PLANIOL, *supra* note 11, at 9; "Acquisition is recommended for all types of law libraries." Kate Wallach, *Planiol, Marcel, Treatise on the Civil Law*, 53 LAW LIBR. J. 55, 67 (1960) (book review); A fervent supporter and promoter of the Planiol translation was Joseph Dainow. *See* Joseph Dainow, *The Planiol Treatise on the Civil Law: French and Louisiana Law for Comparative*

Planiol in his own hand without any collaboration whatsoever,[17] this treatise was designed by the great French author as a textbook, to be used by his students,[18] and was thereafter, for a long time, used as such in law schools throughout France.[19] Consequently, the structure of the treatise was influenced by the law curriculum of that time,[20] and the style adapted to the purpose of teaching law: it is concise and written with striking clarity. Based on the civil code and some satellite statutes, the treatise covers almost all areas of the civil law: a general introduction, the law of persons and family, property, successions and donations, obligations and special contracts (sale, lease, mandate, etc.), the security devices of pledge and suretyship, privileges and mortgages, and aquisitive and liberative prescription.

In the original version important passages are marked with asterisks or double asterisks, and different types and sizes of font are used[21] to emphasize what is of great value for a student (principles, rules or law, elements of a particular doctrine), while still conveying useful information and providing persuasive explanations. The use of different fonts and asterisks was not deemed advisable by the translators, and therefore the English version does not keep these markings. The reason for this was the fact that in Louisiana, Planiol's *Traité Élémentaire* was never

---

Study, 10 AM. J. COMP. LAW 175 (1961); Joseph Dainow, *Civil Law Translations and Treatises Sponsored in Louisiana*, 23 AM. J. COMP. L. 521 (1975).

17. Georges Ripert, *Preface to the 12th Edition of Planiol's Traité élémentaire de droit civil*, in 1 CIVIL LAW TREATISE, *supra* note 11, pt. 1, at 14.

18. PLANIOL, *Intro to the 12th Edition of Planiol's Traité élémentaire de droit civil*, in 1 CIVIL LAW TREATISE, *supra* note 11, pt.1, at 21.

19. Denson Smith, *Foreword* to 1 CIVIL LAW TREATISE, *supra* note 11, pt.1, at 4.

20. Joseph Dainow, *Planiol, Civil Law Treatise. An English translation prepared by the Louisiana State Law Institute from the original French Planiol, Traité Élémentaire de Droit Civil (3 vol. 11 and 12 ed., 1938 and 1939)*, 20 LA. L. REV. 191, 194 (1959-1960) (book review).

21. PLANIOL, *Intro to the 12th Edition of Planiol's Traité élémentaire de droit civil*, *supra* note 11, pt.1, at 21.

intended to be used as a manual for students. In Louisiana, the treatise was designed primarily for use by courts, lawyers and law scholars, and as a source for a better understanding of Louisiana's (French) legal inheritance.[22]

Planiol's work is no longer teaching material, not even in France, but behind what he considered a modest manual for students lays spectacularly complex doctrinal material, laden with detailed historical accounts of how institutions evolved, statistics, economic analysis, comparative analysis, bibliography and "picturesque citations".[23]

Planiol is still "persuasive authority" and no serious legal scholar undertakes the study of a traditional civil law institution without first consulting his treatises. However, much of the underlying philosophy of his work is being forgotten and this is a great opportunity for a reminder. Planiol was opposed to the method of the exegetical school, mainly because he did not believe that the civil law revolves around a code. In his view, the law was a product of life as a whole.[24] Such a core belief is not easy to follow, for it requires a different method of study, which takes into account not just the intrinsic logic of the code, but also the relevance of cases, history, economy, human behavior and other areas of science. Planiol was a perfect apostle for his own philosophy, his erudition allowing him to excel in his challenging methodology.

---

22. "It is believed that the translation of this treatise will well serve the courts, the lawyers and the law schools of Louisiana. Its publication will be accompanied by the hope that it will be a significant contribution to a better understanding of our rich legal inheritance and thereby materially improve the administration of justice in Louisiana." Smith, *supra* note 19, at 5.

23. Ripert, *supra* note 17, at 15.

24. PLANIOL, *Intro to the 12th Edition of Planiol's Traité élémentaire de droit civil*, *supra* note 11, at 19: "In this treatise I have constantly pointed out the relationship of the civil law with the whole of life, not only that of the present, but also that of the past from which it evolved". This one sentence must be remembered, for it brings more light into the way we should approach the civil law than the whole body of positivist legal literature.

Last but not least, the translators of the three volumes should be held in high esteem for what is undoubtedly a very professional and well-crafted translation. The first volume was translated by Pierre Crabites (a distinguished scholar who had formerly served on the Mixed Tribunal of Egypt) and revised by Robert L. Henry (jurist, author and scholar, who also served on the Mixed Tribunal of Egypt), the second was translated by Robert L. Henry, and the third by Jaro Mayda (graduate of Masaryk University, Professor of law at the University of Puerto Rico).[25] Carlos E. Lazarus, Continuous Statutory Revisor and Director of Legal Research for the Institute, undertook the editorial preparation of the manuscript for publication.[26]

The second major project undertaken by the Louisiana State Law Institute was the translation of Gény's *Méthode d'interprétation et sources en droit privé positif*.[27] Gény's *Méthode* is a "wide-horizon general work",[28] dealing with issues situated at the core of legal thinking: legal hermeneutics, kinds of law, and sources of law. He analyses different approaches on interpretation and sets forward a new theory regarding legal interpretation, named *libre recherche scientifique*, able to shed new light on the law and open the door for its progressive development. With his new theory, Gény moves away from most of the ideas of his French legalist contemporaries and, without forsaking a degree of deference to legislative authority, promotes a theory of interpretation that recognized the authority of the interpreter (judge), the scholar, and the citizen.[29] Gény influenced legal

25. Smith, *supra* note 19, at 4.
26. *Id.*
27. *See* GÉNY, *supra* note 12.
28. Dainow, *Civil Law Translations and Treatises Sponsored in Louisiana*, *supra* note 16, at 523.
29. Nicolas Kasirer, *François Gény's libre recherche scientifique as a Guide for Legal Translation*, 61 LA. L. REV. 331, 334 (2001) ; *see also* O. Moréteau, *La traduction de l'œuvre de François Gény: Méthode de traduction et sources doctrinales*, in LA PENSÉE DE FRANÇOIS GÉNY, (François Lormant & Olivier Cachard eds., Dalloz, forthcoming in 2012); François-Xavier Licari, *François Gény en Louisiane*, in LA PENSÉE DE FRANÇOIS GÉNY, *id.*

thinking not only in France and in other civil law jurisdictions, but also in the common law. Great common law authors like Stone,[30] Pound,[31] Llewellyn,[32] and Cardozo[33] have lengthy discussions about Gény's legal reasoning.

The translation for this project was entrusted to Jaro Mayda, who also wrote a lengthy critical introduction in the same volume.[34]

The third and final translation project released by the Louisiana State Law Institute was *The Louisiana Civil Law Translation Series*. Starting with volume 3, this project also benefitted from the expertise and resources of the Institute of Civil Law Studies.[35] The series contains five translations, each dedicated to a major area of civil law. The first four volumes are translations from Aubry & Rau's *Cours de droit civil français*.[36] The first deals with the Law of Obligations, and it translates the fourth volume of the *Cours de droit civil français*, as it was edited by Étienne Bartin in the sixth

---

30. JULIUS STONE, LEGAL SYSTEMS AND LAWYER'S REASONINGS 216, 220, 221, and 222 (Stanford University Press 1964).

31. ROSCOE POUND, 1 JURISPRUDENCE 183 (West 1959); Roscoe Pound, *Fifty Years of Jurisprudence*, 51 HARV. L. REV. 444, 464-470 (1938).

32. KARL N. LLEWELLYN, THE COMMON LAW TRADITION, DECIDING APPEALS 189, 260 and 261 n.46 (Little, Brown & Co. 1960).

33. BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 16, 46-47, 119-121, 138-139, and 143-145 (Yale University Press 1921).

34. Jaro Mayda, *Gény's Méthode After 60 years: A Critical Introduction*, in GÉNY, *supra* note 12, at V-LXXVI.

35. *The Institute of Civil Law Studies* was established in 1965 as a division of the then LSU Law School for the purpose of preserving and enhancing the civil law component of the Louisiana legal system. Since 1976, the institute operates under a different name, *The Center of Civil Law Studies*, and its mission is now expanded to promoting a better understanding and further development of the private law of the State of Louisiana and other civil law jurisdictions, particularly those of continental Europe and Latin America, through theoretical and practical activities, such as publications, translations, sponsorship of faculty and student exchanges, visiting scholars, seminars, and lectures. The Center of Civil Law Studies promotes legal education by sponsoring foreign students who wish to avail themselves of the opportunity of studying a mixed legal system and American students who wish to expose themselves to other legal systems. Such programs take advantage of Louisiana's natural position as an education center for international and comparative legal studies. (http://www.law.lsu.edu/index.cfm?geaux=ccls.home).

36. *See* AUBRY & RAU, *supra* note 13.

edition (1942). The translation was made by A. N. Yiannopoulos, a Greek scholar, holding advanced degrees from the University of Chicago, the University of California, and the University of Cologne, former Professor at Louisiana State University, currently Professor Emeritus at Tulane University. The second volume, regarding the Law of Property, is a translation of Volume II of the seventh edition of *Cours de droit civil*, published in 1961 and edited by Paul Esmein. The translation work was done by Jaro Mayda. The third and fourth volume deal with Testamentary Successions and Gratuitous Dispositions (vol. 3) and Intestate Successions (vol. 4). The third volume corresponds to the last half of Volume X (1954) and the whole of volume XI (1956) of *Cours de droit civil*, while the forth volume corresponds to the last half of volume IX and the first half of volume X, as they were edited by Paul Esmein. Unlike the volumes that dealt with property and obligations, where any addition to the original text was in brackets and the contents was only brought up to date, these editions contain Paul Esmein's own critical views of texts of law or jurisprudence.[37] The translation was prepared by Carlos E. Lazarus, a native of Honduras, and at that time Professor at Louisiana State University, holding degrees from the Municipal College of Commerce in Manchester and Loyola University School of Law. The fifth volume covers the subject of Prescription. Three translations have been included in this volume in order to achieve a comprehensive view of the subject: (1) Baudry-Lacantinerie & Tissier, *Traité théorique et pratique de droit civil, prescription*;[38] (2) Aubry & Rau, *Cours de droit civil français, prescription*;[39] and (3) Carbonnier, *Notes on Liberative*

37. Denson Smith, *Foreword* to 3 TESTAMENTARY SUCCESSIONS & GRATUITOUS DISPOSITIONS, *supra* note 13, at III.

38. BAUDRY-LACANTINERIE & TISSIER, 28 TRAITÉ THÉORIQUE ET PRATIQUE DE DROIT CIVIL, PRESCRIPTION (4th ed. 1924, nos. 1-815). The material was updated with over 270 references to decisions, legislation and doctrine covering the period 1924-1967.

39. AUBRY & RAU, 12 COURS DE DROIT CIVIL FRANÇAIS, PRESCRIPTION (Paul Esmein ed., 6th ed., 1958, nos. 770-776 bis).

Prescription.[40] Once more, the translation project was entrusted to Jaro Mayda.

Just like the Planiol volumes, *The Civil Law Translation Series* proved to be very influential in Louisiana jurisprudence.[41] This comes as no surprise, considering the fact that these volumes were highly influential in France as well. Though French courts do not have the habit of citing doctrine, a great number of decisions were inspired by Aubry & Rau's *Cours de Droit Civil Français*, and some of them followed Aubry & Rau *add litteram.*[42] The authors of the last volume enjoyed the same high esteem. In general, Baudry-Lacantinerie's work dominated French law schools as teaching material for more than twenty years,[43] the reign of the *Précis élémentaire de droit civil* having ended only when Planiol's *Traité élémentaire* was published. In particular, the volume on prescription from the *Traité théorique et pratique de droit civil* is considered "the most elaborate discussion regarding the subject of prescription".[44] Also, Professor Carbonnier's article is a splendid addition to the fifth volume, covering mainly post-Baudry jurisprudence (case law).

---

40. Jean Carbonnier, *Notes sur la prescription extinctive*, 50 REVUE TRIMESTRIELLE DE DROIT CIVIL 171-181 (1952).

41. Aubry & Rau are cited in at least 150 Supreme Court Decisions (using Westlaw's search engine). A few examples of important cases that cite the translation are: Liner v. Louisiana Land & Exploration Co., 319 So. 2d 766; Bartlett v. Calhoun, 412 So. 2d 597; Howard v. Administrators of Tulane Educ. Fund, 986 So. 2d 47; Lombardo v. Deshotel, 94 1172 La. 11/30/94, 647 So. 2d 1086.

42. André Tunc, *Droit Civil Français by C. Aubry and C. Rau. Sixth Edition, Edited by Étienne Bartin and Paul Esmein. Paris: Librairie Marchal et Billard and Librairies Techniques. Twelve Volumes: Ten Volumes and Permanent Supplement Published 1935-1955*, 69 Harv. L. Rev. 1157, 1158 (1956) (book review).

43. Ripert, *supra* note 17, at 13.

44. Denson Smith, *Foreword* to 5 PRESCRIPTION, *supra* notes 13 and 14, at IV.

III. TRANSLATIONS SPONSORED BY THE CENTER OF CIVIL LAW STUDIES

The second group of translations was made under the tutelage of The Center of Civil Law Studies (CCLS; formerly the Institute of Civil Law studies).[45]

The first translation sponsored by the CCLS was René David's *Le droit français: Les données fondamentales du droit français*, published in English under the name *French Law. Its Structure, Sources, and Methodology*.[46] The translation was entrusted to Professor Michael Kindred. René David, having read and approved the translation, also contributed with a preface to the English edition.

The other six books from this group are relatively recent additions, and they all share a common feature: they were either personally translated by or the translation project was supervised or directed by Alain Levasseur, Professor of Law at Louisiana State University. Under his tutelage the following "nutshell" books have been published: (1) Michael Alter, *French Law of Business Contracts: Principles*;[47] (2) Bernard Chantebout, *The French Constitution*;[48] (3) Christian Atias, *The French Civil Law: An Insider's View*;[49] (4) Jean-Louis Halpérin, *The Civil Code*;[50] (5)

---

45. Hereinafter *CCLS*.

46. RENÉ DAVID, FRENCH LAW. ITS STRUCTURE, SOURCES, AND METHODOLOGY (Michael Kindred trans., Louisiana State University Press 1972).

47. MICHEL ALTER, FRENCH LAW OF BUSINESS CONTRACTS: PRINCIPLES (Alain A. Levasseur trans., Louisiana State University Paul M. Herbert Publications Institute 1986).

48. BERNARD CHANTEBOUT, THE FRENCH CONSTITUTION (David Gruning trans., LSU Law Center 1998).

49. CHRISTIAN ATIAS, THE FRENCH CIVIL LAW: AN INSIDER'S VIEW (Alain A. Levasseur & Bachir Mihoubi trans., Louisiana State University Paul M. Herbert Publications Institute 1987).

50. JEAN-LOUIS HALPÉRIN, THE CIVIL CODE (David W. Gruning trans., Paul M. Herbert Law Center Publications 2000).

Louis Favoreau, *Constitutional Courts*;[51] and (6) Christian Atias, *French Civil Law*.[52]

The translations sponsored by the CCLS are ideal for scholars and lawyers interested in comparative law, and especially so for those who are new to this area of legal knowledge. René David's book on French law is a brilliant place to start any study on comparative law. Even though the purpose of his book was to offer an overview of the French legal system, in virtually every chapter the author draws parallels between the common law and the civil law, French law and German law, and all of this in a very succinct and clear manner. Further insight into the fundamentals of French law can be attained through the two translations of Christian Atias, offering an overview of French law and French civil law, and Jean-Louis Halpérin's book regarding the French civil code, a great contribution for all jurists, and not only for legal historians, laying down the story of its birth, an account of previous attempts of codification, the technique employed by its drafters, the innovations it brought to the law, attitudes towards the code after its enactment, different methods for interpretation, and, finally, the influence of the French code in other countries.[53]

In the realm of public law, the overview provided by the two books regarding French Constitutional Law and European Constitutional Courts[54] will open new horizons for those interested in a comparative study of constitutional law. The study of French constitutional law will definitely be intriguing for the American

---

51. LOUIS FAVOREU, CONSTITUTIONAL COURTS (Alain A. Levasseur & Roger K. Ward trans., LSU Law Center 2001).

52. CHRISTIAN ATIAS, FRENCH CIVIL LAW (Alain A. Levasseur trans., LSU Law Center 2002).

53. Not just in Europe, but also in other parts of the world. The author makes reference to the influence of the *Code Civil* in the Americas, with an emphasis on Louisiana and Quebec, the two North American jurisdictions influenced by the French code and the French tradition (*See* HALPÉRIN, *supra* note 50, at 94).

54. Although Louis Favoreau's book deals mainly with Constitutional Courts from different European countries, it is worthwhile to mention that it also dedicates a few pages to Constitutional Courts outside the European continent (*see* FAVOREU, *supra* note 51, at 122-125).

reader, who will find within the French tradition a unique idiosyncrasy regarding constitutional judicial review and will discover that French jurists share quite a different view on the principle of the separation of powers than their American counterparts. Moreover, English-speaking readers will discover the traditional French approach on judicial review, where the Constitutional Council (*Conseil Constitutionnel*) – the institution charged with constitutional review in France – prior to 2008 could, in principle, declare a law unconstitutional only prior to its enactment. Although French constitutional law underwent a significant reform in 2008,[55] substantially enlarging ex-post judicial review by the *Conseil Constitutionnel* and bringing the system in line with the dominating European trend, it is still worthwhile to get acquainted with this form of constitutional review, for the purpose of understanding the mindset of French lawyers and their reticence towards enlarging the scope of judicial review.

The study of Constitutional Courts helps contrast this approach with the tendency of other European countries to extend the scope of constitutional review, while establishing special Courts, distinct from the national Supreme Courts, dealing exclusively with constitutional law issues.

IV. FINAL REMARKS

Having enumerated and said a few words about each component of the *Louisiana Translation Series*, some final remarks are in order. This series is not just a heterogeneous group of doctrinal translations. It was a catalyst for the revival of the civil law in Louisiana and its importance must be acknowledged. At the end of the 1930's Professor Gordon Ireland had characterized

55. Law No. 2008-724 of July 23, 2008, Journal Officiel de la République Française [J.O.], July 24, 2008, No. 171.

Louisiana as a common law state,[56] and his statement was by no means an accident, or a mere provocation. Talking about jurisprudence in the 1930's, Professor Yiannopoulos observed that "reading the decisions of the 1920's and the 1930's one has the feeling that the civil law was dead."[57] The Louisiana State Law Institute and the Center of Civil Law Studies were created with the express purpose of reviving the civil law tradition in Louisiana, and a great role was played by the translation projects initiated by the two institutions. The number of citations of French authority in Louisiana jurisprudence grew significantly during the 50's, 60's and 70's.[58] Based on these translations, through the growing respect and awareness of French civil law materials, Louisiana started developing its own doctrine, and courts soon started following solutions proposed by local scholars, in conjunction with using the translations and foreign doctrine.[59] Thus the civil law in Louisiana was not only saved,[60] but it is now growing and developing its own original mechanisms and legal institutions.

The future holds great promise for the law of this land. Its unique position in the legal universe, with a civil law core permanently in tension with the neighboring common law, might create a system that would benefit from both the theoretical finesse of the civil law and the much-admired pragmatism of the common law.

We must also keep in mind that the *Louisiana Translation Series* is the product of an evolving and continuous process. The

---

56. Gordon Ireland, *Louisiana's Legal System Reappraised*, 11 TUL. L. REV. 585, 596 (1937).

57. A. N. Yiannopoulos, *Louisiana Civil law: A Lost Cause?*, 54 TUL. L. REV. 830, 841 (1980).

58. J.-R. Trahan, *The Continuing Influence of Le Droit Civil and El Derecho Civil in the Private Law of Louisiana*, 63 LA. L. REV. 1019, 1066 n.103 (2003).

59. *Id.* at 1065.

60. In 1972, Justice Mark Barham would write for the Louisiana Law Review proclaiming a veritable "renaissance" of the civil law in Louisiana [*See* Mack E. Barham, *A Renaissance of the Civilian Tradition in Louisiana*, 33 LA. L. REV. 357 (1972)].

first translations consisted of treatises, with the hope that the legal reasoning and the solutions from those treatises will be followed by courts throughout the state. But with the birth of a strong local civilian doctrine and the creation of a 23-volume *Louisiana Civil Law Treatise*,[61] the need to translate thick volumes of doctrine is fading.[62] For that reason, the most recent translations serve a different purpose, that of encouraging the study of comparative law.[63] Only through comparative research can Louisiana law take advantage of its unique position in the legal universe and live up to its full potential.

---

61. LOUISIANA CIVIL LAW TREATISE (West, 23 vols.).

62. The *Civil Code Précis Series* is an example of this movement. This series is a modern and concise analysis of different areas of Louisiana civil law. *See* ALAIN LEVASSEUR, LOUISIANA LAW OF OBLIGATIONS IN GENERAL. A PRÉCIS (3d ed., LexisNexis 2009); ALAIN LEVASSEUR, LOUISIANA LAW OF CONVENTIONAL OBLIGATIONS. A PRÉCIS (LexisNexis 2010); ALAIN LEVASSEUR & DAVID GRUNING, LOUISIANA LAW OF SALE AND LEASE. A PRÉCIS (2d ed., LexisNexis 2011); FRANK MARAIST, LOUISIANA LAW OF TORTS. A PRÉCIS (LexisNexis 2010); MICHAEL H. RUBIN, LOUISIANA LAW OF SECURITY DEVICES. A PRÉCIS (LexisNexis 2011); JOHN RANDALL TRAHAN, LOUISIANA LAW OF PROPERTY. A PRÉCIS (LexisNexis 2012). *See also* SUSAN GUALTIER, *Louisiana Civil Code Précis Series* (book review), in the present volume of the J. CIV. L. STUD.

63. There is also a stringent need to develop a solid legal vocabulary of the civil law in English. To this purpose, the Association Capitant France and the Louisiana Chapter of the Association Capitant are in the process of translating approximately 2000 words (concepts) related to the civil code, selected from the famous VOCABULAIRE JURIDIQUE CORNU, the best French legal dictionary to date.