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Cueto-Rúa's Judicial Methods of Interpretation of the Law: A Guide for the Future

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CUETO-RÚA'S JUDICIAL METHODS OF INTERPRETATION OF THE LAW: A GUIDE FOR THE FUTURE

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Writing an introduction to a masterpiece of legal scholarship is a humbling exercise, as much as it is to be the successor of Joe Dainow and Saúl Litvinoff at the helm of the Louisiana State University (LSU) Center of Civil Law Studies (CCLS). Joe Dainow introduced Julio Cueto-Rúa to a group of Louisiana judges to analyze and discuss how hard cases come to be decided, in a series of seminars conducted in New Orleans and Baton Rouge in 1976 and 1977. Saúl Litvinoff encouraged him to develop his work into a book published in 1981, where Cueto-Rúa added the analysis of many more cases and furthered the discussion. We thus owe this publication to Don Saúl, as the great Litvinoff was called at LSU and in Louisiana.

I. THE TOPIC

Every jurist reading Julio Cueto-Rúa's *Judicial Methods of Interpretation of the Law*[1] feels like a student experiencing revelation

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1. JULIO C. CUETO-RÚA, JUDICIAL METHODS OF INTERPRETATION OF THE LAW (Pub. Inst. Paul M. Hebert Law Center Louisiana State University 1981). Excerpts are published in 15 J. CIV. L. STUD. 445 (2023).

after revelation. The book is a page-turner for whomever is interested in judicial work and method. One may read the works of superior minds at a younger age and revisit them later in life, as it always feels like a new or renewed learning experience. While eager students will marvel at discovering the world of judicial interpretation, more seasoned attorneys, judges, and law professors will rediscover this art when reading this book, reflecting in depth on what all too often appears like a routine activity. I asked several Supreme Court justices in different parts of the world, every one of them responded that the core of their activity is interpretation.

This book is an attempt to answer an intriguing question: how do judges decide hard cases? There is more to learn from these than from run-of-the-mill cases. One tends to believe that the answer will differ based on the judge's legal system or tradition. Who would try to answer this question embracing both civil law and common law traditions? Mastering all techniques of lawyering in both of them is necessary but not enough. It entails adopting a holistic vision of the law, combining legal history, linguistics, and philosophy, in addition to being a first-class jurist versed in comparative studies. It takes to be Julio Cueto-Rúa or to have reached the top of comparative law scholarship. In my most inspired moments when teaching Western Legal Traditions to LSU first-year law students, I bridge the divide between civil law and common law and identify commonalities when addressing hard cases, those where a traditional approach is a road to nowhere, a dead-end, a denial of justice, sounding like hitting hard on a silent piano key. This is because the answer to hard cases is an invitation to transcend legal techniques ascending to a meta-juridical dimension, as my master in legal philosophy and comparative law used to put it.[2] As Shael Herman has it in his review of the book, "[t]he essential point of Dr. Julio Cueto-Rua's new volume, *Judicial Methods of Interpretation of the Law*, is that judicial

2. *See* Olivier Moréteau, *Hans-Albrecht Schwarz-Liebermann von Wahlendorf (1922-2011)*, 4 J. CIV. L. STUD. 227 (2011).

method in both civil and common law secretes issues of philosophy and value as naturally as bees make honey."[3]

Interpreting legislation is the same process whether one is in one tradition or the other. One says that the paradigm of the civil law tradition is the code and its general provisions, which come to life when interpreted by scholars and judges. This is undoubtedly true, but the civil law tradition also produces hordes of technical and very detailed regulatory provisions. Likewise, one says that the paradigm of the common law tradition is the case, and that legislation is very detailed and based on hypotheticals rather than general norms. This is once again certainly true, but the common law also has codes, such as the Uniform Commercial Code in the US, and bills of rights, such as the First Amendments to the US Constitution and the Human Rights Act 1998 in the United Kingdom. Differences therefore reside in the context. In the civil law tradition, the civil code is the general law that guides the interpretation of special laws. Special laws derogate from the general law, and the general law prevails when special laws are silent, sometimes calling for extensive interpretation so that no gap remains unfilled.[4] In the common law, however, every statute is special law. The statute addresses particular problems left unsolved or resolved inadequately by the courts. Statutory law develops in the context of case law, which serves as a general law, and remains applicable by default when the statute is silent. Like special laws in civil law systems, common law statutes call for restrictive or strict interpretation, as they derogate from the general law. In both systems, as Cueto-Rúa shows with mastery, principles and value control when hard cases are to be decided, and the process is far from purely empirical and subjective. A judgment may be, at the same time, result-oriented, principle and value-oriented.

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3. Shael Herman, *Judicial Methods of Interpretation of the Law by Julio C. Cueto-Rúa*, 42 LA. L. REV. 1213 (1982).

4. As stated though in different terms in the Preliminary Provision of the Civil Code of Quebec: CODE CIVIL [C. CIV.], Preliminary Provision (Que.). 1991, c. 64, in force since January 1st, 1994.

Though the civil law tradition has been the cradle of interpretative methods due to its historical reliance on the book and later on the codes, legal interpretation is by nature transsystemic. As such, maxims of interpretation such as *a pari materia* or *eiusdem generis* support judgments in both the civil law and the common law. In both legal traditions, every jurist knows or should know of the nuances between *a pari* and *a fortiori* arguments. The rich toolbox of exegetical techniques developed in the civil law tradition is to be shared with the whole world. Eminent scholars have repeatedly promoted the study of the civil law in common law jurisdictions, particularly the United States.[5]

Modern methods of interpretation burgeoned in civil law jurisdictions, particularly in France where the Napoleonic Code neared its centenary without much revision. Indeed, it became artificial to second-guess legislative intent in the new social and economic context created by the industrial revolution. These new ideas crossed the Atlantic: while conservative civilians worried at courts embracing Gény's *libre recherche scientifique*, the American realists marveled at Francois Gény's creative thinking.[6] They followed his recommendation to encompass sociology, economics, and all available social data in attempts to transcend legislation made in earlier times or to push towards judicial breakthrough in the absence of legislation.[7] In the civil law world, Gény's admonition to go beyond the

5. Roscoe Pound, *The Influence of the Civil Law in America*, 1 LA. L. REV. 1 (1938); ARTHUR T. VON MEHREN, THE CIVIL LAW SYSTEM: CASES AND MATERIALS FOR THE COMPARATIVE STUDY OF LAW 825 (Englewood Cliffs 1957) and subs. eds; JOHN HENRY MERRYMAN, THE CIVIL LAW TRADITION (Stan. U. Press 1969) and subs. eds.; Paul R. Baier, *The Constitution as Code: Teaching Justinian's Corpus, Scalia's Constitution, and François Gény, Louisiana and Beyond—Par la constitution, mais au-delà de la constitution*, 9 J. CIV. L. STUD. 1 (2016).

6. *See* ROSCOE POUND, JURISPRUDENCE 183 (West 1959); JULIUS STONE, LEGAL SYSTEMS AND LAWYER'S REASONINGS 216, 220-222 (Stan. U. Press 1964); BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 16, 46-47, 119-121, 138-139, 143-145 (Yale U. Press 1921); KARL N. LLEWELLYN, THE COMMON LAW TRADITION, DECIDING APPEALS 189, 260-261, 422 (Little, Brown & Co. 1960).

7. Olivier Moréteau, *La traduction de l'œuvre de François Gény : méthode de traduction et sources doctrinales*, *in* LA PENSEE DE FRANÇOIS GENY 69 (Olivier Cachard et al. eds., Dalloz 2013).

code risked empowering the courts to go well beyond acceptable limits, moving jurisprudence to become a full-fledged source of the law. Gény's master, Raymond Saleilles, also a visionary and a comparatist in addition, foresaw the danger that could threaten a brilliant idea. In his 1899 preface to Gény's book, he recommended that one may go beyond the code but through the code, to keep up with the tenets of the civil law tradition.[8] The plan is thus to find legislative support to a novel solution, citing to the Civil Code general clauses or open-ended provisions.[9] The French Court of Cassation does this with mastery, hiding bold arguments in short and cryptic language paying lip service to code provisions while serving as alibi to judicial activism.[10] Francois Gény's *Méthode d'interprétation et sources en droit privé positif* was translated into English at LSU,[11] and is of significant influence in the State of Louisiana.[12] Cueto-Rúa may have met Jaro Meyda, the translator. Mayda rejected translating *libre recheche scientifique* by "free scientific research," as was commonly done,[13] and instead used the phrase "free objective search for a rule,"[14] applying Gény's method to his translation work.[15]

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8. Raymond Saleilles, Preface to FRANÇOIS GENY, METHODE D'INTERPRETATION ET SOURCES EN DROIT PRIVE POSITIF, CRITICAL ESSAY (2d ed. 1954, trans. Louisiana State Law Institute 1963), p. lxxxi. The book was first published in 1899.

9. Olivier Moréteau, *The Future of Civil Codes in France and Louisiana*, 2 J. CIVIL L. STUD. 39 (2009).

10. Olivier Moréteau, *Codes as Straitjackets, Safeguards and Alibis: The Experience of the French Civil Code*, 20 N.C.J. INT'L & COM. REG. 273 (1995).

11. GENY, *supra* note 8.

12. François-Xavier Licari, *François Gény en Louisiane*, *in* LA PENSEE DE FRANÇOIS GENY 91 (Olivier Cachard et al. eds., Dalloz 2013); *François Gény in Louisiana*, 6 J. CIV. L. STUD. 475 (2013).

13. *See* POUND, *supra* note 6, at 183; STONE, *supra* note 6, at 216, 220, 221, 222 (also using the French term at 223), as does CARDOZO, *supra* note 6, at 16, 46-47, 119-121, 138-139, 143-145.
loc. cit.); *see* also VON MEHREN, *supra* note 5.

14. Jaro Mayda, *Gény's Méthode after 60 Years. A Critical Introduction*, *in* GÉNY, *supra* note 8, at x-xii.

15. Nicholas Kasirer, *François Gény's libre recherche scientifique as a Guide for Legal Translation*, 61 LA. L. REV. 331 (2001).

Julio Cueto-Rúa was familiar with this literature and interpretative evolution.[16] As such, his thinking and analysis go beyond the straitjacket of positivism and formalism, while his work transcends civil law and common law boundaries. Cueto-Rúa searches how judicial minds analyze and solve the hard cases, but he does not err on the side of subjectivity. On the contrary, he analyzes interpretation with objectivity, considering rules not in the abstract but in the context of the facts to which they are to be applied, as judges do and have to do. He makes room for value judgments that are inevitably made by the parties, and ultimately by the court.

II. THE AUTHOR

I did not have the privilege of meeting Cueto-Rúa in person. Julio César Cueto-Rúa (1920-2007), "one of the most prominent Argentinean jurists,"[17] earned his law degree at the National University of La Plata in 1942 and his Doctorate in Law in 1949 at the same University. He was an active politician from the 1950s to the 1980s, and operated as the Minister of Industry and Trade of the Argentine Republic in 1957-1958 during Pedro Eugenio Aramburu's de facto administration. In Argentina, he was a disciple of Carlos Cossio, a renowned legal philosopher who crafted the "egological theory of law,"[18] much cited in Cueto-Rúa's book. In 1949, Carlos Cossio debated with Hans Kelsen in a famous meeting that took place at the Universidad de Buenos Aires.

Following Cossio's advice, Cueto Rúa pursued higher legal studies in the United States. This was a remarkable move at a time when legal scholars in Argentina and South America focused on Europe rather than North America. Cossio insisted that Cueto-Rúa travelled to the United States to better understand the normative

16. *See* Bibliography, CUETO-RÚA, *supra* note 1, at 495-501.

17. For a short biography, *see* Note, *Julio Cesar Cueto Rúa, One of the Most Prominent Argentinean Jurists, Has Passed Away - He Was an Academic and Political Centrist - His Passing*, 13 L. & BUS. REV. AM. 793 (2007).

18. CARLOS COSSIO, LA TEORÍA EGOLÓGICA DEL DERECHO Y EL CONCEPTO JURÍDICO DE LIBERTAD (2d ed. 1964).

structure of the common law. In 1953, Cueto-Rúa completed an LL.M. at Southern Methodist University (SMU), in Dallas. After his LL.M., he wrote El Common Law,[19] seen by many as the best book on the common law in Spanish, and SMU appointed him director of the Law Institute of the Americas. In the 1970s and the 1980s, Cueto-Rúa taught at SMU and then at LSU. At LSU, he taught civil law courses, spending half a year in Baton Rouge and half a year in Argentina. His association with LSU was most fertile. He was a great friend of Saúl Litvinoff, who left a durable print on the civil law of Louisiana, as the leader of the revision of the law of obligations.[20] He published well-cited articles in the Louisiana Law Review and Tulane Law Review. These include a much-cited essay on Abuse of Rights,[21] his Tucker Lecture on The Future of the Civil Law,[22] and a rebuttal to an article by Vernon Palmer.[23] In 1976, he was invited to give the Fifth Tucker Lecture, the signature civil law lecture organized every year by the CCLS. Among the first ten Tucker lecturers are René David, Paul-André Crépeau, T.B. Smith, Henry Merryman, André Tunc, who like Cueto-Rúa are all beacons of comparative law scholarship. He meanwhile had a strong presence in Argentina, as president of the Argentine Association of Comparative Law and as a short time Justice of the Argentine Supreme Court.

Judicial Methods of Interpretation of the Law was published in January 1981 by the Publications Institute at the Paul M. Hebert Law Center, during Saúl Litvinoff's tenure as director of the CCLS and chairman of the Publications Institute. This was at the peak of the LSU Cueto-Rúa era. All these years, the book had been available in

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19. JULIO C. CUETO-RÚA, EL "COMMON LAW": SU ESTRUCTURA NORMATIVA, SU ENSEÑANZA (La Ley 1957).

20. *See* ESSAYS IN HONOR OF SAÚL LITVINOFF (Olivier Moréteau, Julio Romañach, Alberto Zuppi, eds., Claitor's 2008).

21. Julio C. Cueto-Rúa, *Abuse of Rights*, 35 LA. L. REV. 965 (1975).

22. Julio C. Cueto-Rúa, *The Future of the Civil Law*, 37 LA. L. REV. 645 (1977).

23. Julio C. Cueto-Rúa, *The Civil Code of Louisiana Is Alive and Well*, 64 TUL. L. REV. 147 (1989).

English only, a language that the author mastered perfectly. A Spanish translation is now soon to be available, of which I was asked to write the preface, which triggered the present publication as well as the excerpts that follow. Such a masterpiece needs no second edition, but translation makes it available to a larger public. The CCLS is considering a reprint of the English edition.

III. THE BOOK

The book has a corpus followed with substantial illustrations. An Introduction and ten chapters expose the substance of interpretative methods, showing that the way judges interpret the law in hard cases is not purely empirical or formalistic. The following illustrations consist of thirty-three cases taken from Louisiana and other jurisdictions. These cases are summarized and used as testing materials for Cueto Rúa's theoretical contentions made in the preceding chapters. The Journal of Civil Law Studies publishes a sample, including the introduction, the full text of Chapter II and the first half of Chapter IV. Two cases have been selected among the thirty-three illustrations, from Louisiana and Tennessee, in which the defendants were blamed for not blowing a horn or ringing a bell.[24]

The reader should not expect a traditional description of the interpretative methods when reading the book. As a distinguished reviewer observed in his book review,

> the various methods of judicial interpretation are not discussed side by side, in a traditional comparative fashion, but in an integrated manner. This is a result of Professor Cueto-Rua's belief that "essentially, civil law judges and common law judges follow the same dialectical process of evaluating and understanding the law as evidenced by the judges' grounding their decisions in similar logical and axiological considerations."(p. 3).[25]

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24. Julio C. Cueto-Rúa, *Judicial Methods of Interpretation of the Law (Excerpts)*, 15 J. CIV. L. STUD. 445 (2023).

25. Boris Kozolchyk, *Judicial Methods of Interpretation of the Law, By Julio C. Cueto-Rúa*, ARIZ. J. INT'L & COMP. L. 138 (1984).

Chapter I describes the scope of the study, starting with the subject matter and a presentation of the officials dealing with the law. "Fact finding" is presented as the contextual framework, as judicial interpretation does not operate in the abstract but in the context of a case. Chapter II addresses the structure of the case, insisting on an important element all too often overlooked:

> Traditionally, the prevailing theories of the judicial process of interpretation of the law have focused only upon these two components of a case, i.e., the empirical and logical elements. There is, however, a third and vitally important element which must be considered in any proper and complete theory of judicial interpretation. Although theoretical emphasis upon this element has been lacking, experience and reality reveal its pervasive influence and importance. Structurally, this element is found in every case as the values inherent in juridical experience. That is to say that the events, i.e., human behavior and the natural phenomena linked thereto, constituting juridical experience are value laden, having either positive or negative value. The axiological element of a case is, then, the value or worth exhibited by the "facts" of the case, the behavior of the parties, and the behavior of the judge.[26]

The whole book focuses on the centrality of this axiological element, often neglected in the discussion or hiding in the parties' arguments and echoed in the discussion of what civilians call the spirit of the law. Chapter III discusses the judicial process, describing the fascinating judicial back-and-forth: starting with *a priori* logical elements; moving to the logico-normative mind of the judge who gets acquainted with the facts of the case; going back to the rules of law which may be applied to those facts; then having a closer look at the facts; returning to the rules of law with an increased understanding of the facts; going back to the facts after the search of new normative meanings; and exploring again the rules of law in search of specific grounds for the decision. One cannot be further away from the

26. CUETO-RÚA, *supra* note 1, at 15.

traditional dichotomy between the allegedly civilian deductive approach and the allegedly common law inductive approach. This does not mean that Cueto-Rúa ignores those differences—he acknowledges them in this chapter and all along in the book, extending his investigation from legislation to judge-made law. Custom is also discussed in this dialectical presentation of the judicial process. The book then successively details the logical elements, the historical element, the pragmatic and teleological elements, and the influence of the doctrinal elements and axiological factors.

The conclusive Chapter X opens on the following statement:

> There is a tendency to assume uncritically that only one rule, or at least only a few rules, refer to each case, that each one of those rules has a single, true meaning, and that there is only one proper method of interpreting those rules and that the method selected leads to one and only one logical conclusion. All those assumptions are wrong. The entire legal system, including principles, standards, and basic concepts, such as "good faith," "public order," "good morals," "due diligence," and "the reasonable man," is involved in each case. These principles, standards, and concepts can, moreover, be called to bear upon the interpretation of every rule of law and upon its application to the facts of the case.[27]

The mention of standards is unusual and is to be noted.[28] The chapter and corpus of the book ends with the following paragraphs that summarize the entire work but cannot be a substitute to the reading:

> In summary, any theory of the judicial process of interpretation of the law that ignores social reality and juridical experience is obviously incomplete and unsatisfactory. Moreover, any such theory which, although acknowledging social reality, and juridical experience, fails to recognize and provide for the complex structure of juridical values is likewise

27. CUETO-RÚA, *supra* note 1, at 273.

28. See Olivier Moréteau, *Le standard et la diversité*, *in* LAW AND HUMAN DIVERSITY 71 (Mauro Bussani and Michele Graziadei eds., Stämpfli, Bern 2005); *Estándard y diversidad* (Carla Arrobo trans.), 7 REVISTA ARGENTINA DE DERECHO EMPRESARIO 79 (2007).

> incomplete and unsatisfactory. The complex structure of juridical values gives meaning to the law. That structure must be taken into account in any complete and satisfactory theory of the judicial process of the interpretation of law. Finally, any such complete and satisfactory theory is a theory of the understanding of the meaning of justice.[29]

IV. THE CENTRALITY OF HUMAN INTELLIGENCE

The book no doubt offers a solid jurisprudential theory for judges to interpret the law: it is an antidote to possible artificial intelligence poisoning. At a time when artificial intelligence appears as a new frontier of human and legal affairs, it is essential to reflect on what is intrinsically human in judgment making. Predictive justice appears as a progress over the time when jurists had to do patient and partial research in card-indexed catalogues, and later in databases. Having access to a corpus of all recorded earlier decisions and the capacity of identifying identical situations and possible solutions in a matter of seconds is formidably attractive. Compliance with suggested solutions gives a sense of doing justice. However, it has considerable flaws.

The machine cannot weigh the context of each case, its temporality, the axiological or value-based part of the judgment. It cannot replace the judge or dictate the decision in the unique, individual case at bar. The judge mediates the law, moral and social values (vertical dimension) while resolving the conflicting interests of the parties (horizontal dimension). The judge keeps the kite of law and life floating in the air, and tries to prevent a crash in every case, particularly the hard ones. We owe this fertile metaphor to Werner Menski,[30] who places religion, ethics and morality at the front end of the kite, under the generic name of nature. The left end of the kite points to what he refers to as state law, to designate the positive law of the nation-state, whether unitary or federal. Conversely, the right

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29. CUETO-RÚA, *supra* note 1, at 277.

30. WERNER MENSKI, COMPARATIVE LAW IN A GLOBAL CONTEXT (2d ed., Cambridge U. Press 2006).

end points to society and socio-legal approaches. The tail of the kite is the place of international law, whether hard or soft, that weighs more and more on the life of the law. The good judgment keeps the kite in the air by allowing none of its four ends to pull down too heavily. Too much weight on positive law may undermine society and natural principles, while ignorance of state law and too much weight on socio-legal approaches and religion may cause the kite to drift, or nosedive if actioned by religion or morality alone. International law should balance the kite, without pulling back too heavily or ignoring the particular experience of a given society and its positive law, while being in harmony with the natural forces operating at the front end. This activity is quintessentially human, as the reader realizes at every page of Cueto-Rúa's book. Artificial intelligence is no safe hand to keep balance in ever changing winds and variable atmospheric pressure. It is a source of information at best, but a dubious predictor, especially in hard cases. Only a well-trained human hand can keep the kite floating in changing air, firm or lenient at times, sentient at all times.

There is another potential risk. Artificial-intelligence-driven predictive justice is all eyes in the rearview mirror. It does not look forward. It stocks what was done, unable to judge whether right or wrong, and has no knowledge of the aspirations of the group and of what is to come. It is therefore conservative in nature; not that there is anything wrong in being conservative, or progressive for that matter. Both forces are needed for balanced solutions. It takes formidable human energy to pull a system forward and to meet societal aspirations that may become the new normal in the future. Think of the abolition of slavery, of gender and racial equality, of climate change. Legal trailblazers need more talent and hard work to pull the system forward and lead to improvement, when facing opponents having wholesale knowledge of past decisions at their fingertips.

In legal activity, artificial intelligence may be a fine learning tool to improve writing skills, an interactive law library accessible everywhere at every moment, and a gain-saver for routine tasks, which are all good things. It must not become a substitute to intrinsically human activity. Aspiring and seasoned lawyers must not give up on intellectual effort and emotional intelligence.

Cueto-Rúa was a humanist. His book exemplifies the great work of judges using their knowledge and understanding of the law, their sense of where society leans as a whole, of the tensions that may pull it apart. He gives us methods to adjudicate hard cases, a human method. Of course, the book is based on past cases; however, it does not teach the past but judicial methods. This teaching cannot feed a computer program, as sophisticated and self-developing as computing may be, and reducible to the size of a gavel. Only the person of a naturally intelligent judge can make a judicial decision, not an artificially intelligent gavel. Judicial Methods of Interpretation of the Law is a marvelous guide to human-centered, natural intelligence.[31] After four decades, it is as fresh and future oriented than at the time of its publication. It is time to blow the dust off the edge of the book and start the reading, especially if you live in Louisiana.

V. A TOOL FOR THE FUTURE IN LOUISIANA AND BEYOND

Due to its bridging civil-law and common-law systems and methods, this remarkable volume is a perfect tool for students, scholars, attorneys, and judges alike in Louisiana and beyond. Louisiana jurists need once and for all to accept that being bijural is like

31. Though many will keep thinking that there is apparent arbitrariness and empiricism in the way judicial decisions are made. Shael Herman expressed "a widely shared doubt that anyone—including the judges—can explain how cases are decided. In this iconoclastic era, we tend to be stubbornly skeptical about anyone's ability to give a full, rational account of any human experience, whether it is politics, economics, or physics," yet concluded his review of the book as follows: "For lawyers, it is a powerful antidote to the pragmatism and hypertechnicality of daily practice. For students, it can counteract the typical tendency to read cases as if they were only rules, devoid of philosophical implications." Herman, *supra* note 3, at 1219 and 1221.

being bilingual. Just like languages, no legal system is superior to others. The more systems one masters, the less confused and more effective one becomes in any of these systems, with better intellectual equipment to handle human and legal affairs, whenever and wherever. The focus on social reality and juridical experience, also fully encompassing juridical values, helps the reader understand that the mastery of the law is no pure technique that can be reduced to algorithms and equations. As understood by Julio Cueto-Rúa, judicial interpretation is no perfect machinery, but an essential and perfectible human process shaping the law towards fair outcomes in individual cases and better justice in evolving societies.