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Book Review

Litvinoff: Civil Law Treatise. Vol. 6. Obligations—Book I. West Publishing Co., 676 pp., 1969.

One of the main problems facing the development of civil law in so-called "mixed jurisdictions" such as Louisiana and Quebec is one of availability of original doctrinal sources. For a long time these two legal systems had to rely on French textbooks or treatises with particular difficulties in the case of Louisiana, due to the language limitations. Translations of French treatises¹ could only serve as a partial solution, while Louisiana scholars themselves could find time to write authentic doctrinal works which would take into consideration the true and specific legal and jurisprudential tradition of Louisiana law. Under the auspices of the Institute of Civil Law Studies of the Louisiana State University Law School, Professor Saúl Litvinoff added another important and significant contribution to the already growing series of Louisiana treatises on civil law.² Professor Litvinoff's first book on Obligations is the beginning of a series of 3 or 4 volumes covering the entire field of obligations, with the exception of delicts and quasi-delicts. This first volume covers both the general introduction to the law of obligations and, under the heading of "conventional obligations," consent and cause as a prerequisite to the formation of contracts.

I particularly enjoyed reading Part I (the law of obligations in general) in which one can easily detect the love that the author has for philosophy of law. Going back to the original sources of the Roman law which are explained with clarity and show the author's ability for historical synthesis, Professor Litvinoff gives a most interesting view of how the law of obligations has developed various hues and "nuances" in its evolution through different legal systems. The author's perfect mastery of French, German, Spanish and common law sources, which is so apparent throughout the entire book, gives him great facility in truly dominating the subject and in showing the reader the utility of returning to the historical sources for a better understanding of one's own law. The comparative approach throws an inter-

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1. PLANIOL, *TREATISE ON THE CIVIL LAW* (transl. La. St. Inst. 1959); AUBRY ET RAU, *DROIT CIVIL FRANÇAIS—OBLIGATIONS* (Yiannopoulos transl. 1965); GÉNY, *MÉTHODES D'INTERPRÉTATION ET SOURCES EN DROIT PRIVÉ POSITIF* (transl. La. St. L. Inst. 1963).

2. 2 A. YIANNPOULOS, *PROPERTY* (1967), 3 A. YIANNPOULOS, *PERSONAL SERVITUDES* (1968).

esting light on the philosophical concept of obligation itself and on the interpretation given to it by the courts of the various legal systems which derive their origin from Roman law.

In the second part of the book, an important emphasis is put on the explanation and discussion of the notion of cause. Whereas in France, after the reply of René Capitant³ to Planiol's criticisms, cause has, practically speaking, raised very little controversy in the courts, Louisiana case law, on the contrary, has taken an entirely different view of the situation. Through repeated judicial decisions it has developed a unique and original concept, prompted probably both by the content of the Civil Code⁴ and by the relative but nevertheless powerful influence of the common law concept of consideration.⁵ A civilian raised in the French or Quebec legal tradition cannot help but be amazed at the richness and usefulness of the legal tool developed by the Louisiana courts. Often faced with contradictory statements of Louisiana judgments, Professor Litvinoff has to be warmly congratulated on having succeeded in presenting with deep knowledge and insight the subtleties of the Louisiana law on the subject. Comparative law scholars as well as Louisianians will, without doubt, find these chapters most fascinating.

One cannot help but both admire and envy two qualities in Professor Litvinoff's book, the first being his extraordinarily fine knowledge of comparative law. This allows him, throughout the book to put the Louisianian solutions in contrast with other legal systems of the same historical background, as well as in juxtaposition with the common law legal system. It thus gives the Louisiana reader a very constructive point of reference to appreciate and judge his own law with a more critical eye; to all others it provides an easier access to the pith and substance of the Louisiana legal system. The documentation of foreign materials given in the footnotes is impressive, carefully selected, and gives a leading direction for future investigations on each particular topic.

The second predominant quality of Professor Litvinoff's book rests with the successful blending of theoretical and practical discussions of the law of obligations. This, to my knowledge, is a new, modern and very successful approach to this particular

3. H. CAPITANT, *DE LA CAUSE DES OBLIGATIONS* (Dalloz, 1923).

4. LA. CIV. CODE arts. 1779, 1893-1900.

5. 6 S. LITVINOFF, *LOUISIANA LAW TREATISE—OBLIGATIONS* nos 286-303, at 507-47.

section of the law which for too long a time has remained in the minds of many people as only a purely theoretical and abstract combination of legal rules. Often enough, authors in the past and especially French authors, have had a tendency to separate and sometimes even completely isolate "theory" and "practice" in the field of obligations.⁶ I do believe that Professor Litvinoff has succeeded with his book in demonstrating the futility and unrealistic approach of this dichotomy, and to show, where others had failed, that the living law of obligations is both the set of general principles written in the law or handed down by tradition, and the synthesis of the practical solutions given by the courts to particular legal problems when interpreting these general principles and relating them to the facts of each particular case. In this respect, and following this pattern, the discussion of the notion of cause includes that of remission of debt (which is usually and classically treated as a means of extinguishing obligations) and transactions and compromise (normally found in treatises on special contracts), because through these legal concepts the Louisiana jurisprudence has, extensively examined and thoroughly discussed the notion of cause.

In conclusion, Professor Saúl Litvinoff's work is truly a very fine piece of legal scholarship. It will remain an important and significant contribution to the development of Louisiana civil law. Moreover, it will be of great value to foreign legal scholars and serve as a fine tool of comparative law as well as an excellent exposé of the richness of Louisiana legal tradition.

Jean-Louis Baudouin

6. Planiol, for one, found it necessary to write after his *Traité Élémentaire de Droit Civil a Traité Pratique de Droit Civil Français*, which, in his own mind was designed for practicing lawyers. A somewhat similar position prevailed for a long time in Quebec where a sharp but artificial distinction was made between the "theoretical" and "practical" treatises.

