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## The Legacy of Civil Law

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## THE LEGACY OF CIVIL LAW\*

*Pan. J. Zepos\*\**

It has been an exceptional privilege and a particular honor for me to be invited to give this first lecture in honor of John H. Tucker, jr., at once an eminent scholar and an invaluable and highly esteemed friend.

When, in 1961, I was fortunate enough to stay at the Tulane Law School of New Orleans, as a visiting professor for a series of lectures on matters of Greek Law, I had a unique opportunity to attend some courses by distinguished American colleagues, among which were the courses on Roman Law then given by Mr. John H. Tucker, jr., so justly honored today. I will always remember those courses that testified to the man's wisdom and erudition. I will also keep a vivid recollection of our long discussions in New Orleans, through which I had the good chance of getting better acquainted not only with the learned scholar but with the charming conversationalist and noble-minded man who — allow me to note — has since honored me with his sincere friendship.

It does not fall to me to analyze here today John H. Tucker's work and scientific contribution. This task devolves upon others, much more competent than I. To me, it suffices today that the illustrious Law School of the Louisiana State University has thought it its duty to honor John H. Tucker for his contribution as a scholar and teacher, as Chairman of the Louisiana State Law Institute and member of many learned societies, and finally as an enthusiastic promoter of research on Civil Law, which this State still attends with the same zest as does our aged Europe across the ocean. This is all I need, to offer John H. Tucker, with honor, respect and love, this lecture on "The Legacy of Civil Law" — a subject I feel to be so close to the aspirations and efforts of the honored jurist.

### I

The term Civil Law is known to be used with diverse connotations. We speak of Civil Law as opposed to Criminal Law or Canon Law, Commercial or Maritime Law. We also speak of Civil Law as synonymous with Private Law in general. But we primarily

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\* This was the first of the Tucker Lecture Series, and was delivered at the Louisiana State University Law School on June 7, 1972. The bibliography mentioned in the following footnotes is a selected general bibliography, in which the reader may find more detailed references.

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speak of Civil Law as distinguished from Common Law, that is to say as the legal system historically developed, mainly in continental Europe under the influence of Roman Law and transplanted from Europe to other areas of the world, except where the Anglo-Saxon law system or the religious laws of the Moslems or the Buddhists or others established their ascendancy.<sup>1</sup>

It is this concept of Civil Law as the legal system evolved mainly in continental Europe as a facet of the age-long evolution of Roman Law that will be used here. In this sense, Civil Law, along with Common Law and the diverse religious laws, has been and still is one of the three forces, which from the standpoint of law, at once divide and move the whole world to this very day. And when we speak of the "Legacy of Civil Law", we refer to the significance of that law to civilization as a whole, the essence and scope of its meaning and, lastly, its instrumentality in regulating human relations from the standpoint of law, *i.e.*, of a rhythm of social life with a possibility of enforcement and coercion.

So, Civil Law is a European law. But with this statement, the question is immediately raised: what is this Europe, what is this continent where a uniform conception of law emerges as an element of the civilization and culture shared by all Europeans? Simple though it may appear at first glance, the question is actually very hard to answer if we try to give the geographical boundaries of that continent in terms of its cultural significance. Although Europe is defined as the continent extending from the Urals to the Atlantic — the natural boundaries that make it a distinct mass of land — from the viewpoint of culture, we would find it hard to accept the whole of that expanse as Europe; we could hardly accept the culture that governs human relationships developing all over that expanse as European culture. On the other hand, we may fearlessly brand as European that culture which, in certain historical periods, started out from Europe and spread — through migrations, colonizations, or sheer imitation — to vast areas of all the four other continents.

It is not the purpose of this lecture to discuss this complex problem of the meaning of Europe. Besides, so much has been said and written on the subject that discussions need not be repeated here. It may be enough to recall a few names of famed authors, such as Christopher Dawson, Henri Pirenne, Paul Koschaker, or even Erich Genzmer and Franz Wieacker, to whose weighty opinions I can safely refer for the many scholarly ideas they taught in recent decades about

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1. See R. SCHLESINGER, *COMPARATIVE LAW* 245 n.22, 251 (3d ed. 1970); R. DAVID & J. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* nos. 18-53 (1968).

European civilization in general and the significance of law as an element of that civilization in particular.<sup>2</sup>

In searching for the root of the common European spirit in the realm of law, one should certainly not stop at the general mention of Europe by Herodotus in relation to the Greeks.<sup>3</sup> When it comes to the realm of law, the root of that common European spirit lies in the law of the Roman world-empire, the final phase of which is represented by the Justinian legislation in the form it took in the 6th century.

It was Justinian, that great Byzantine emperor, who conceived the ambitious plan of restoring the Roman Empire and establishing in it one law and one faith and also one language — the Greek language. "One State, one Law, and one Church" — such was the brief formula of Justinian's entire political career, says A. A. Vasiliev, the eminent Byzantinologist, in his "History of the Byzantine Empire."<sup>4</sup> And this formula succinctly expresses the founding of European civilization on these three elements — the State, Law, and Religion — as well as on language, on which the other elements of every civilization, such as learning and science, the economy, the arts, and so forth, have since been pivoting. Justinian's age marks the advent of some kind of "European" law, at least some law, for what was then the consequential portion of Europe. It is my humble opinion that, at least as far as law is concerned, we cannot help viewing Justinian's times as the most decisive period for the foundation of the European spirit in the history of law.

As a matter of fact, we may even trace the origin of the idea of "one state, one law, one religion" as far back as the fourth century, to the days of Constantine the Great, founder of the Byzantine state. However, in Constantine's times there was not yet as much "sociability" and as much "force" as displayed by the age of Justinian in the realm of law. In these developments, the sophistication and refinement of man's nature through ethics and religion were raised to the level of substantial cultural forces and they definitely consecrate Ethical Culture which, at least in the case of law, was to start out on a

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2. C. DAWSON, *THE MAKING OF EUROPE* (1935); H. PIRENNE, *MALROMET ET CHARLEMAGNE* (1936); P. KOSCHAKER, *EUROPA UND DAS ROMISCHE RECHT* (2d ed. 1953); see also many contributions of other authors published in *L'EUROPA E. IL DIRITTO ROMANO, STUDI IN MEMORIA DI P. KOSCHAKER* (1954); E. GENZMER, *IL DIRITTO ROMANO COME FATTORE DELLA CIVILTÀ EUROPEA*, in *CONFERENZE ROMANISTICHE* (1954); F. WIEACKER, *PRIVATRECHTSGESCHICHTE DER NEUZEIT* 26 (2d ed. 1967).

3. HERODOTUS, *HISTORY* I.4 (The Loeb Classical Library ed. 1966): "The Persians claim Asia for their own, and the foreign nations that dwell in it; Europe and the Greek race they hold to be separate from them." See also II. 16, IV. 36, III. 115, and IV. 45.

4. A. VASILIEV, *HISTORY OF THE BYZANTINE EMPIRE* 148 (1952).

really glorious march in later times.<sup>5</sup>

After Justinian, the great milestone in the development of a spirit of European law was undoubtedly the Christmas Day of A.D. 800, when Pope Leo III crowned Charlemagne emperor in Rome. A Frankish-German as well as Christian empire was thus emerging, which was to live long enough in Europe a life parallel to that of the Greek-Christian Byzantine Empire.<sup>6</sup> Europe was thus taking its final cultural form, composed of Greek, Roman, Frankish-Germanic, and Christian elements. The gradual Hellenization of the Byzantine state in eastern Europe, the gradual assertion of the Roman political concept of the "Imperium" in western Europe, plus the spiritual domination of Christianity in both west and east, have definitively molded the foundations of European civilization. And these foundations historically rested on the contributions made to the intellectual, political, and moral civilization by the three symbol-cities — Athens, Rome and Jerusalem. The European civilization was born. And that civilization was to spread gradually, by the 19th and 20th centuries, all over the geographical extent of Europe when, after Islam's withdrawal, the Balkans were liberated and when Russia finally sought a place for herself within that same civilization.

I cannot dwell any further on these matters, which are obviously of much broader scope than the subject of immediate concern. However, a general contemplation of such broader matters was inevitable here, considering that the legacy of civil law, that is, the significance of European Roman law, can only be grasped within the context of the historical evolution of European civilization as a whole.

## II

It should indeed be borne in mind that Law, whatever the philosophical sense in which it is conceived, is in any event an expression and an element of the whole civilization in a certain space and certain time. The reason is that civilization is an aggregate of the values historically evolved which, as a single organic whole, are handed down from generation to generation for the purpose of taming man and his social life. There can be no question that this taming is what is also sought by law as a rhythm of social living together, in other

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5. For Constantine the Great, *see*, G. OSTROGORSKY, *GESCHICHTE DES BYZANTINISCHEN STAATES* (2d ed 1952); M. ROSTOVITZ, *2 GESELLSCHAFT UND WIRTSCHAFT IM ROMISCHEN KAISERREICH* 210 (1930); N. BAYNES, *CONSTANTINE THE GREAT AND THE CHRISTIAN CHURCH* (1929); A. PIGANIOL, *L'EMPEREUR CONSTANTIN* (1932); J. VOGT, *CONSTANTIN DER GROSSE UND SEIN JAHRHUNDERT* (1949).

6. *See* P. KOSCHAKER, *EUROPA UND DAS ROMISCHE RECHT* (2d ed. 1953); F. WIEACKER, *PRIVATRECHTSGESCHICHTE DER NEUZEIT* 216 (2d ed. 1967).

words, as a cultural element with effective consequences.

Roman law has been undoubtedly one such cultural element for Europe and has been the basis on which the European Civil Law was built. It is, therefore, worth retracing briefly the evolutionary path which Roman Law and its theory have trodden before crystallizing into a European Civil Law in our own days. This is the only way we can grasp both the importance and the meaning of Civil Law, the "Legacy of Civil Law."

We need not say much about the history and development of Roman Law down to the times of the great European codifications. Through the schools of the Glossators and post-Glossators or commentators, then through the humanists and the disciples of the School of Natural Law, and lastly through the teachings of the disciples of the Historical School and the Pandectists, that history and development are very well known.<sup>7</sup> The point is that the elaboration of Roman Law met with different fates in eastern and western Europe. When eastern Europe fell to Islam, the elaboration of Roman Law was confined to western Europe, where, refolded and renewed, it finally became in essence a law common to the peoples who survived, or were spared by, the Islamic flood.

In eastern Europe, Roman Law was enriched with many Greek, Oriental and Christian elements, and in the form of Byzantine law, it enjoyed a long and unbroken life for a thousand years or more. When, in 1453, that empire was finally shattered under the blows of Islam, the Byzantine legal compilations had such luster that their force, tolerated by the conquerors, was preserved among the enslaved Christians throughout the duration of the Ottoman occupation, and their radiance reached undiminished as far as Russia, Armenia and other eastern countries. The history of Byzantine law was enriched with the living history of the so-called post-Byzantine law. These laws have been an evidence of the survival of the idea of European law established in eastern Europe since the times of Justinian.<sup>8</sup>

The fate of the Roman Law in western Europe was entirely different. There, with the invasion of Germanic tribes — the Goths, the Franks, the Vandals, the Longobards, and others — the Western Roman Empire was finally destroyed in A.D. 476. Since then some

7. See P. VINOGRADOFF, *ROMAN LAW IN MEDIAEVAL EUROPE* (2d ed. 1929).

8. See the brief survey in P. ZEPOS, *GREEK LAW* 24 (1949); K. VON LINGENTHAL, *GESCHICHTE DES GRIECHISCH-ROMISCHEN RECHTS* (3d ed 1892); Heimbach, *Griechisch-romisches Recht in Mittelalter und in der Neuzeit*, 87 *ERSCH UND GRUBER, ALLGEMEINE ENCYCLOPAEDIE DER WISSENSCHAFTEN UND KUNSTE* 1 (1869). P. Collinet, *Byzantine Legislation*, 4 *THE CAMBRIDGE MEDIEVAL HISTORY* 706 (1936); E. FRESHFIELD, *ROMAN LAW IN THE LATER ROMAN EMPIRE* (1932).

general decline of the whole civilization can be observed. But Roman Law was not altogether extinct. In fact, in Spain and the south of France, even in Germany and primarily in Italy, it was preserved in the "*leges barbarorum*" often influenced by Roman Law, in the "*leges romanae*", some rudimentary teaching in the "rhetorical schools" and also through imitation in the drafting of notarial documents. But it was primarily with the evergrowing ascendancy of the Church that Roman Law, clearly influencing the formative process of Canon Law, was kept alive during those dark ages, before it became stronger after the foundation of Charlemagne's empire about the year 800. Thus, though neglected, Roman Law survived during those centuries until about 1100. And it is perhaps since those times that traces of a certain vulgarism can be detected in Roman Law — that vulgarism which the learned researches by the eminent Romanist Ernest Levy and later scholars have established as a peculiar manifestation of Roman Law in medieval or earlier times.<sup>9</sup>

In any event, it is around the year 1100 that the study of Roman Law, as well as its fate, reach their great and decisive turning point. The development of new political, social and economic conditions, the increase in international communications and international trade, the rise of the Church to the status of a political force, and a renewed interest in the study of the Classics and the fine arts, also had their effects in the research on Roman Law and the renewal of its study. The universities of Pavia and Bologna in northern Italy were the cradles of that renewed interest. Particularly in Bologna, with the use of the discovered manuscripts of the Justinian legislation and especially of the Digest, Irnerius and his disciples subjected the sources of Roman Law to a systematic study and became the founders of the glorious school of the Glossators. Since the 13th century, the post-Glossators, with Bartolus and Baldus as their foremost representatives, turned their attention to an inquiry into the practical applications of Roman Law in Italy and they were followed by imitators in other countries of western Europe. In fact, since the 15th century, chairs of Roman Law were founded in France, Germany, Spain, Holland, Poland, Czechoslovakia, and even in England; and universities awarded the title of "Doctor Utriusque Iuris", that is, of both Roman and Canon Laws. The research on Roman Law thus

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9. The bibliography is very rich. See F. WIEACKER, GRUNDER UND BEWAHRER (1959), VOM ROMISCHEN RECHT (1961), PRIVATRECHTSGESCHICHTE DER NEUZEIT (2d ed. 1967); E. WOLF, GROSSE RECHTSDENKER DER DEUTSCHEN GEISTESGESCHICHTE (4th ed. 1963). On the problem of "vulgarization" see E. LEVY, 1 GASAMMELTE SCHRIFTEN 163 (1963), WEST ROMAN VULGAR LAW, THE LAW OF PROPERTY (1951), WESTROMISCHES VULGARRECHT, DAS OBLIGATIONENRECHT (1956); M. KASER, 2 ROMISCHES PRIVATRECHT 3, 13 (1959).

became a common cause for the peoples of Europe. And that common cause became more and more appealing with the teachings of later schools (*e.g.*, the "elegant" school of the humanists, mainly French, during the Renaissance: Cujacius, Donnelus, and others), with the development of the idea of "*usus modernus Pandectarum*" (modern use of the Pandects, both in the law-courts and in the doctrine of Germanic countries), with the philosophy of the School of Natural Law (Grotius, Puffendorf, Thomasius) which began to submerge continental Europe in the 17th century, and lastly with the Historical School of G. Hugo and Savigny and its extension in the teaching of the Pandectists of the 19th century in Germany.<sup>10</sup>

This is how Roman Law asserted itself both in doctrine and practice in modern times. As far as practice is concerned, the gradual "reception" of Roman Law, already begun in the 13th or 14th century in various countries of western Europe, finally came to consolidate, about 1600, the concept that Roman Law was the common European law, the inexhaustible source for legal ideas as well as practical solutions.<sup>11</sup>

The reception of Roman Law is a remarkable phenomenon in the history of European civilization in general as well as in the history of European law in particular. In fact, the gradual penetration by Roman Law differed both in form and extent in each European country, from Spain to the Scandinavian countries and from France to Italy and Germany. But a common feature of that penetration by Roman Law and its spirit was that the "*Corpus Juris Civilis*", as studied and interpreted from the times of the Glossators, had been diffused into the legal life of European peoples through the combined efforts of professors, judges and practitioners. Of course, Roman Law has had to vie with local laws, especially the customary law of the various countries. From this struggle, however, Roman Law very often emerged as the victor. The reason is that, with the gradual turn to the study of classical texts and the more systematic structure of the interpretation of Roman Law, the luster of that written law asserted its supremacy; and the "*ratio scripta*" formed, if not directly the law in force, at least an extensive subsidiary authority. Roman Law thus became a common cultural achievement in Europe, with

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10. See generally P. VINOGRADOFF, *ROMAN LAW IN MEDIAEVAL EUROPE* (2d ed. 1929); L. WENGER, *DIE QUELLEN DES ROMISCHEN RECHTS* § 86, 726 (1953).

11. On the "reception" see note 10 *supra*; see also M. CONRAT, *GESCHICHTE DER QUELLEN UND LITERATUR DES ROMISCHEN RECHTS IM FRUHEREN MITTELALTER* (1891); F. CALASSO, *1 MEDIO EVO DEL DIRITTO* (1954); W. KUNKEL, *Das Wesen der Rezeption des Romischen Rechts*, *HEIDELBERGER JAHRBUCHER* (1957); G. von Below, *Die Ursachen der Rezeption des Romischen Rechts in Deutschland*, 19 *HISTORISCHE BIBLIOTHEK* (1905); M. KASER, *ROMISCHE RECHTSGESCHICHTE* 12, 278, 284 (2d ed. 1967).



the exception of England, where the reaction was particularly strong and paved the way to a molding of the Common Law system. When new concepts of the State and of sovereignty as well as new relations of commercial communication evolved in continental Europe, that is, when new concepts of public, administrative, criminal and procedural law, as well as of commercial and maritime law developed, what remained of Roman Law became essentially Civil Law. And it was this Civil Law of Roman origin, together with the Customary Law of the various European countries, that formed the chief source of inspiration for the great codifications that made their appearance mainly in the early 19th century.<sup>12</sup>

### III

To be exact, these codifications made their appearance in Europe, in the late 18th century or even earlier. Thus, in distant Russia, Catherine the Great took much pride in publishing in 1767 the "General Principles for the Drawing of a New Code", prompted by the spirit of enlightenment; in the Scandinavian countries the idea of codification had appeared much earlier. Moreover, some of the German Lander had similarly made codifications, *e.g.*, Bavaria in 1756 and especially Prussia in 1794. Lastly, in the Danubian countries, in Walachia and Moldavia, the Byzantine and post-Byzantine laws found their codified forms in a series of important legislative compilations such as the Legal Handbook of Michael Photeinopoulos (1765), the Legal Constitution of Alexander Hypsilantis (1780), the Moldavian Civil Code (1817), the Walachian Code (1818), and others.<sup>13</sup>

Thus, central and eastern, northern and southern Europe historically preceded western Europe in the codification process. Nevertheless, we usually speak of this phenomenon in contemplation of the series of great legislative compilations that appeared in the early 19th century, starting with publication of the French Civil Code of 1804. And rightly so, for in this Code and the Austrian General Civil Code that followed it in 1811 as well as in all subsequent civil codes published in the course of the 19th and 20th centuries there is one element in common, particularly characteristic of the impact of the age-

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12. See Rabel, *Private Laws of Western Civilization*, 10 *LA. L. REV.* 1 (1950); H. COING, *DIE URSPRUNGSCHE EINHEIT DER EUROPÄISCHEN RECHTSWISSENSCHAFT* 155 (1968); G. KEGEL, *Sinn und Grenzen der Rechtsangleichung*, 11 *KÖLNER SCHRIFTEN ZUM EUROPARECHT* 9 (1969).

13. On these codifications in the Danubian Countries, see P. Zepos, *L'influence du droit byzantin sur la législation roumaine de la période des princes phanariotes*, 1 *STUDI IN MEMORIA DI P. KOSCHAKER, L'EUROPA E IL DIRITTO ROMANO* 429 (1953), *Byzantine Law in the Danubian Countries*, 7 *BALKAN STUDIES* 343 (1966).

long Roman Law tradition printed in those texts.

These codes became the law of the new states required by the principle of nationalities; this means that these codifications were political, liberal and nationalistic achievements, which in a certain sense express the liberal and nationalistic spirit typical of the 19th and 20th centuries. Thus, the codes of that period were new texts in relation to the earlier law prevailing in each individual country. In this sense, it would be an error to say that they basically formulated in articles and paragraphs the Roman Law which had developed into a law common to all Europe in the preceding period.<sup>14</sup> Nonetheless, in spite of their individuality and their aspirations to lay down a new law, the 19th and 20th century codes could not break away from their historical background. That historical background was the amalgamated legal system that had been fashioned in Europe out of strong elements of Roman Law and equally strong elements of local customary law, the whole enriched with the teachings of the Romanists, the Canonists and especially of the School of Natural Law. That amalgam had imported to the realm of law, as noted earlier, a certain special character of a general European spirit. And that European spirit could not be by-passed or ignored in drawing the European codes, considering that codes are, by themselves, elements of culture and that culture is by its very essence an organic force handed down by generation to generation. The European codes of the 19th and 20th centuries certainly aspired to introduce a new, clear-cut law. But that law as a cultural force was necessarily bound to the precedent European spirit. The 19th and 20th century codifications were European codifications that gave expression to the general European spirit evolved over the centuries under the influence of Roman and other elements.

This remark becomes even clearer if we recall the historical origin of some of the basic principles and some of the basic institutions of European codes. Of these principles and institutions, some do derive from genuine Roman conceptions while others do not. Among the latter, it may be noted that the so-called right of personality and the related recognition of the right to reparation of moral damages, as formulated especially in the Swiss and other codes, are acquisitions of modern times when, under the influence of general philosophical ideas, the concept of "personality" was recognized as an individual and necessary logical category and as an "aim in itself" in the system of law. Likewise, marriage became an institution clearly influenced by Canon Law teachings, especially in respect of

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14. On the whole problem see R. DAVID & J. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* nos. 18-53 (1968).

the distinctions into inexistence, nullity, and annullability. Also the protection of bona fide purchaser of chattels, was formulated in European codes mainly on the basis of German customary laws. Again, the expansion of the principle of strict liability observed in modern laws was necessitated by social and economic considerations which form the basis of the theory of professional risk developed in modern times. As another example of a basic principle of law, the principle of freedom of agreement, basically derived from the teachings of the Canonists and scholars of the School of Natural Law, has suffered and is still suffering many restrictions from social and economic considerations. None of these principles and institutions is of Roman origin.

In contrast, however, there is a host of principles and institutions which basically express Roman conceptions in the modern European codes and which hardly need a specific mention. Among these may be noted the concept of ownership which, despite its elaboration by means of all kinds of "social" restrictions, is still basically Roman. Also still basically Roman is the regulation of intestacy in the law of inheritance, even though this too has been somewhat adulterated with the acceptance of the "*parentel*" system. Equally Roman is the principle of favoring the debtor which underlies the whole system of the law of contracts in order to protect the weak against the strong. And to cite one more example, Roman also is the principle of the observance of good faith in the performance of obligations which, enriched with Teutonic ideas over the centuries, still basically originates from the Roman conception of "*bona fides*."

This last principle merits our particular attention. The principle of good faith and usage in transactions pervades all European codes. It is primarily on this principle that the theory of prohibition of the abuse of right rests in laws where there is no express provision for such prohibition, as in the German Civil Code. But this principle also expresses something else. Along with a host of other provisions in European codes on more specific matters, the principle of good faith expresses the idea of equity which — though it does not have in those codes the formal procedural character it has under the Common Law system — nevertheless has a substantial significance and ultimately becomes the essential companion of the juristic syllogism in interpreting the rules of law.

In fact, equity, which as "*epieikeia*" was first revealed in ancient Greek philosophy and particularly in Aristotle's teachings, was finally embedded in Roman Law as "*aequitas*", synonymous with Natural Law and Justice, and came to mean a complex of ethical and moral precepts, such as good faith, fairness in transactions, humanity, generosity, even flexibility, namely, elements that help to adjust

the specific case of legal relationship to a general and abstract rule of law.<sup>15</sup>

This equity as a substantive, not merely procedural, element which wells up from the contents of modern European codes is one of the primary elements of the spirit of European culture imprinted in those codes. Its ethical and moral significance imparts ethical and moral force to those codes and is perhaps one of the most substantive elements of the legacy of the world of Civil Law — the ultimate remedy in the interpretation of Law, as ingeniously defined in the famous article 21 of Louisiana Civil Code.<sup>16</sup> This Equity is of Greek, Roman, and Christian origin. And these three ingredients actually constitute the essence of modern European culture which, in the realm of law, has been enriched with Frankish and Germanic elements.

Insofar as the law is concerned, this amalgam of Roman, Greek, Christian and other elements, certainly retains its marked Roman character. We have only to think of the terminology, the technique and the logical structure and systematization of modern Civil Law to grasp the significance of Roman tradition, that Roman tradition which experienced a deep refolding during the development from the times of the Glossators through the period of the great codifications. It was from this refolding, to which all the varied elements noted above have contributed, that is, from the elaboration of the Roman tradition over the long centuries of that European development, that emerged the spirit and meaning of Civil Law, its ethical and moral force, which gives it a particular color and constitutes the brilliant "Legacy of Civil Law" to our modern civilization; a legacy whose cultural character acquires a weighty importance when compared with the equally brilliant Common Law, similarly founded on homogeneous cultural elements. From the synthesis of these two worlds of law, separate and yet alike in their cultural constitution, that is, from the synthesis of Civil Law and Common Law, we can reliably hope to attain the desired objective of a unification of legal life in this

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15. The bibliography on Equity is very rich. See with mention of further bibliography, G. HUMBERT, V° AEQUITAS, 1 Dictionnaire des Antiquités Grecques et Romaines 108 (1877); E. JONKERS, V° AEQUITAS, 1 Reallexikon für Antike und Christentum 141 (1950); M. KASER, 1 Romisches Privatrecht 172 (1955); C. ALLEN, Law in the Making 305 (3d ed. 1939); J. GRAY, The Nature and Sources of the Law 302 (2d ed. 1938); A. GUARINO, *Equita* (diritto romano), *Novissima Digesto Italiano* (estratto).

16. LA. CIV. CODE art. 21: "In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent."

constantly troubled but still unflaggingly vigorous world of ours. This synthesis already appears in this State where Common Law and Civil Law ideas coexist in a remarkable way, as the Louisiana Civil Code is interpreted with the spirit of both the Civil Law and the Common Law systems.