

Louisiana Law Review

Volume 34
Number 5 *Special Issue*
1974

Article 12

9-1-1974

FRENCH LAW - ITS STRUCTURE, SOURCES, AND METHODOLOGY.

By René David. Translated from the French by Michael Kindred.

Baton Rouge, Louisiana State University Press, 222 pp., 1972

H. Alston Johnson III
alston.johnson@law.lsu.edu

Follow this and additional works at: <https://digitalcommons.law.lsu.edu/lalrev>



Part of the Law Commons

Repository Citation

H. Alston Johnson III, *FRENCH LAW - ITS STRUCTURE, SOURCES, AND METHODOLOGY*. By René David. Translated from the French by Michael Kindred. Baton Rouge, Louisiana State University Press, 222 pp., 1972, 34 La. L. Rev. (1974)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol34/iss5/12>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

BOOK REVIEWS

FRENCH LAW—ITS STRUCTURE, SOURCES, AND METHODOLOGY. By René David. Translated from the French by Michael Kindred. Baton Rouge, Louisiana State University Press, 222 pp., 1972.

H. Alston Johnson III*

In 1975, Louisiana will celebrate the sesquicentennial of its Civil Code of 1825, a document which, with minor alterations, has governed a major portion of the relationships between its citizens until the present day. Lawyers, judges and other scholars need hardly be reminded that the Code of 1825, although "officially" promulgated in both English and French, was written in French and translated into English for promulgation.

For these reasons, it is particularly appropriate that René David's masterful work on the French legal system has been recently made available to a broader audience by means of the excellent translation by Professor Michael Kindred and publication of the book under the auspices of the Institute of Civil Law Studies of Louisiana State University Law School.

The present work is a translation of a 1960 publication by Professor David, *Le Droit Français: Les données fondamentales du droit français*,¹ one volume in a series of books on contemporary legal systems published under the auspices of the Institute of Comparative Law of the University of Paris. The 1960 publication contained the notation that the book was the first volume of an introduction to French Law, conceived especially for the use of foreign students studying in France and foreign jurists. As promised in the notation, the first volume was followed the same year by a second volume,² a collaboration by fifteen French law professors under the direction of Professor David, on the basic principles of the various branches of French substantive law.

This bit of history is provided to put into proper context the otherwise presumptuous title of the present work. The book was never intended to be the definitive exposition of French Law in general, but rather as an introduction to the basic tenets of the French legal system, written for a special audience: those heretofore unfamiliar with

* Assistant Professor of Law, Louisiana State University Law School.

1. Vol. XI, *Les Systèmes de Droit Contemporains* (Paris: Librairie Générale de Droit et de Jurisprudence, 1960). This was updated by the author who also read and approved the English translation.

2. LE DROIT FRANÇAIS, TOME II: PRINCIPES ET TENDANCES DU DROIT FRANÇAIS, Vol. XII, *Les Systèmes de Droit Contemporains* (Paris: Librairie Générale de Droit et de Jurisprudence, 1960).

that system. It need hardly be emphasized that this purpose makes the book particularly desirable to the Louisiana lawyer as well as others unfamiliar with the French legal system.

This emphasis on the choice of audience is in no way intended to minimize the importance of the book, or the quality of its scholarship. In fact, it may well be more difficult to compose such a volume and make it at once complete and yet clear and intelligible to the uninitiated reader. Professor David, with the excellent assistance of Professor Kindred's faithful and readable translation, has done precisely that.

One is struck immediately with the practical and direct approach which is characteristic of Professor David's work. Discussing the part that French legal principles play in the world legal system in the preface to the English edition, he is quick to add:

In no way is [this discussion] intended to suggest that contemporary French law is superior to any other national law belonging to [the Romano-Germanic] family. Even less could one assert that French law constitutes a perfect expression of ideal justice in the contemporary world . . . Other legal systems have improved upon the French model in many ways; and sweeping reforms are required in French law to deal with the challenges of today's world. Nevertheless, the new developments that have occurred over the past two centuries in the countries of the Romano-Germanic family have been profoundly influenced by French law, and the best way to understand these other legal systems, . . . is still to study initially the principles of French law and the way in which French lawyers reason about legal problems.³

Predictably, this French jurist approaches the subject matter as he would any legal problem: logically and completely. He begins with an excellent preface which, it has been noted by another reviewer, is "itself entitled to recognition as a separate work."⁴ Then he discusses the French legal tradition, encompassing a brief history of pre-codification legal tradition and, of course, developments subsequent to the promulgation of the *Code Civil des Français* in 1804.

In the second part, Professor David outlines the political, administrative and judicial organization of France. This of course includes a discussion of French constitutional law. It may come as somewhat of a surprise to the American reader, accustomed as he is to the concept of constitutionalism in the United States, to find that the

3. P. viii.

4. Pascal in 21 AM. J. COMP. LAW 609, 611 (1973).

French constitution does not by any means play a paramount role in the French legal system. In fact, there have been ten constitutions since 1804. The remainder of this part is devoted to the judicial structure and finally to the administrative apparatus, which is well developed in France.

In the remaining sections of the book, Professor David turns his attention to French lawyers and their education, the French concept of law in general and the organization of substantive law, and finally to the sources and methods of French law. Two appendices are included, one on the teaching of law in France, the other containing general bibliographical information.

There are a number of points which should be of particular significance to the American, and especially to the Louisiana, reader. One of these appears at many junctures in the work and reveals a principle essential to understanding the French legal system: law in France is not simply a matter for lawyers. It is in fact, in the ideal, the rules of order for society which Everyman is deemed to know and upon which he is deemed to base his conduct. It is not at all unusual to find large numbers of law students in France who do not have, and never have had, any intention of practicing law. Aside from the convenience and significant economic benefit of student life in France, more than a few of these "non-practitioners" simply feel that it is a part of their duty as citizens to be familiar with the legal principles of the society in which they are to live and work.

A second major point about which comment might be made is that there does not appear to be, in this work, any undue reverence or deference paid to the Civil Code of 1804. In fact, Professor David is clearly of the opinion that new interpretations of the Code to meet the needs of a changing society are perfectly compatible with the historical development of the civil law:

A common law lawyer regards a statute as a legislative dictate that must be obeyed as strictly as possible, while a French lawyer has a completely different perspective. He thinks of the codes as a modernized *Corpus Juris Civilis*. Everyone knows how that document was interpreted and distorted over the centuries to develop the kinds of solutions required by a changing society. Now the same kind of effort is required of the courts and scholars with respect to the codes. This effort was not very apparent during the nineteenth century, when the codes were new and their rules generally coincided with lawyer's views of the requirements of justice. But this harmony no longer exists in some areas, and courts and scholars have taken great liberties with the codes. 'By

the Civil Code, beyond the Civil Code' was the motto provided to jurists in 1900 by Saleillies, who paraphrased Ihering's earlier statement in Germany: "By the Roman Law, beyond the Roman law." This formula describes the method of contemporary French jurists.⁵

The present volume satisfies a very significant need in the library of the Louisiana lawyer: an extremely readable, thorough, entertaining and authoritative treatment of the basic tenets of the French legal system. It covers the historical and philosophical roots of French legal thought as well as the nuts and bolts of the present judicial and administrative system. It is difficult to imagine a simpler and more pleasant treatment of the subject. For those readers whose appetite is whetted for more of the same, one can only hope that the second volume of this work might also be made available through the same process to a wider audience. For the meantime, however, Professor David's volume is a highly recommended starting point.

5. Pp. xii-xiii.