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THE ROLE OF JUDICIAL DECISIONS AND DOCTRINE IN CIVIL LAW AND IN MIXED JURISDICTIONS. Edited by Joseph Dainow. Louisiana State University Press, 1974. Pp. 350. \$16.00.

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BOOK REVIEWS

THE ROLE OF JUDICIAL DECISIONS AND DOCTRINE IN CIVIL LAW AND IN MIXED JURISDICTIONS. Edited by Joseph Dainow. Louisiana State University Press, 1974. Pp. 350. \$16.00.

*John T. Hood, Jr.**

The civilian approach in deciding legal issues emphasizes the importance of legislation and custom, assigning only a secondary role to jurisprudence. Doctrine has its place in both civil and common law jurisdictions, but civilians traditionally have made greater use of doctrine as a persuasive source of law than has been done in the common law.

Most legal scholars feel that Louisiana has adhered consistently to civil law principles in the judicial decision making process. Many believe, however, that it has more or less abandoned those principles, and has substituted common law theories and practices in place of them. The state is surrounded by common law jurisdictions, and some common law practices unquestionably have crept into our legal system. The extent to which that has occurred has been the subject of debate by lawyers and historians for many years.

In recent years lawyers and judges have become more conscious of Louisiana's unique legal heritage. Jurisprudence and doctrinal writings during the past few decades indicate that the state is experiencing a revival of its civil law traditions. This renewed emphasis of civil law principles is due in a large measure to the recent publication of several treatises on civil law subjects, with particular reference to Louisiana law, authored by eminent law professors, and to the translation into English of a number of civil law treatises published primarily for other jurisdictions. Most of those treatises and translations are published under the sponsorship or auspices of the Louisiana State Law Institute, and the Institute of Civil Law Studies of Louisiana State University Law School.

Another important contribution was made recently to the growing wealth of Louisiana civil law literature. A book entitled "*The Role of Judicial Decisions and Doctrine in Civil Law and in Mixed Jurisdictions*," edited by Joseph Dainow, was published in 1974 by the Louisiana State University Press. Professor Dainow is Emeritus Professor of Law and Director of the Institute of Civil Law Studies at Louisiana

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State University. He is an eminent legal scholar, having taught and written extensively in many areas of the civil law. Among other accomplishments, he edited the much used "1972 Compiled Edition of the Civil Codes of Louisiana."

In this current work, "*The Role of Judicial Decisions and Doctrine in Civil Law and in Mixed Jurisdictions*," Professor Dainow for the first time has collected a series of doctrinal writings on that subject, authored by distinguished legal scholars in various parts of the world. Although the book somewhat accents the role of judicial opinion and doctrine in Louisiana's legal experience, it also includes scholarly discussions of the subject with reference to France, Germany, Italy, Scotland, South Africa, Israel and Mexico. Ten chapters of the book are devoted to the role of jurisprudence and doctrine in these countries, thus enhancing the value of the publication to those who are interested in comparative law as well as a better understanding of their own legal system. Included in these chapters are articles authored by A. N. Yiannopoulos, Jean Carbonnier, René David, Karl Larenz, John Henry Merryman, David M. Walker, Ellison Kahn, G. Tedeschi and Y. S. Zemach, U. Yadin and Woodfin L. Butte.

The reader interested only in the civil law system of Louisiana can conveniently confine his attention to the first four chapters of the book, containing essays or articles which discuss extensively the impact of judicial opinion and doctrine in Louisiana.

The first article, authored by Jean-Louis Baudouin, analyzes the impact of the common law on the civilian systems of Quebec and Louisiana. The author primarily deals with the extent of the penetration of common law theories into these jurisdictions. While conceding that the intrusion of the common law has been greater in Louisiana than in Quebec, he rejects the view that Louisiana has abandoned its civil law system. His conclusion is that Louisiana offers "an original system that draws from the civilian and the common law families and one which can observe the cross-fertilization of these two legal systems."¹

Chapters II and III provide the reader with the views of two distinguished associate justices of the Louisiana Supreme Court—Albert Tate, Jr., and Mack E. Barham. Justice Tate discusses the role of the judge in mixed jurisdictions, as

1. P. 22.

reflected in the Louisiana experience. He regards the Louisiana judge as being in a unique, advantageous and flexible position, free to draw upon both systems of law. After a well reasoned discussion, he concludes that a judge in this state is "more free than his common-law counterpart . . . to devise socially just and sound rules to regulate the unprovided-for case," and that "the courts must, more and more, undertake a continuous revision and updating of the rules of private law—always subject to legislative revision and rejection."²

Justice Barham wrote a scholarly, well documented treatise which addresses itself to the renaissance of the civilian tradition in Louisiana. The author points out factors which he feels have contributed to the renewed interest of lawyers and courts in civil law principles, and the circumstances which cause him to believe "that civil-law tradition will continue to strengthen in Louisiana."³ His article is of particular interest in that it describes the reasoning and logic used by the Louisiana Supreme Court in several specific cases which have signaled the resurgence of civil law theory and tradition in the state.

The fourth chapter was written by Professor A. N. Yianopoulos, a noted civil law scholar and member of the Louisiana State University Law faculty. Entitled, "Jurisprudence and Doctrine as Sources of Law in Louisiana and France," the article defines authoritative and persuasive sources of law, and it explains how each of those sources functions in a civil law system. The author then devotes the major part of the article to an analysis of the function of persuasive sources in general, and the role of jurisprudence and doctrine, both persuasive sources, in the legal systems of Louisiana and France. Those interested in comparative law are especially advised to read this chapter.

The last chapter of the publication contains a selective bibliography prepared by Charles Szladits, Adjunct Professor of Comparative Law at Columbia University. The bibliography is comprised of a selection of writings on the role of judicial decisions and doctrine in the sphere of civil law in France, Germany, Switzerland, Austria, and Italy, with a few items about Belgium, the Netherlands and Spain. Also in-

2. P. 37.

3. P. 65.

cluded is a selection of relevant books and articles in English about foreign and comparative law.

Thus, although the book does not purport to contain all of the pertinent essays on its subject, it provides an exhaustive list of doctrinal writings and materials which will be of invaluable assistance to legal scholars who desire to research the role of jurisprudence and doctrine in civil law and in mixed jurisdictions.

This latest offering by Professor Dainow puts the various works of outstanding civil law and legal scholars on this subject under one cover. The researcher no longer needs to examine myriads of law review articles and essays scattered throughout the library in order to gain a fundamental grasp of the role of judicial opinion and doctrine in civil law and in mixed jurisdictions. The book makes a valuable contribution to the lore of the civil law and it should have a place in every law library.