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# Louisiana Civil Law and Its Study

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## I. CIVIL LAW

Louisiana is the one State of the Union in which the *Civil Law*, as opposed to the Anglo-Norman inspired *Common Law*, prevails as a substantial portion of its total legal system. Accordingly, Louisiana law schools offer instruction in both Civil Law and Common Law, affording the student a kind of bi-cultural legal education at the undergraduate level found in the same degree only in Louisiana, Puerto Rico, Quebec, and, in a somewhat different way, in Scotland and South Africa. The term *Civil Law*, however, has several connotations, and it is advisable to distinguish them before proceeding further.

The term itself is derived from *Jus Civile*, the law of the *cives*, or citizens, of the City of Rome. As thus used, *Jus Civile* or *Civil Law* encompassed all the law applicable to Roman citizens, both that which specified the rights and obligations between the citizens as individual persons, which today would be called *private law*, and that which prescribed the rights and obligations between the body politic and individual persons, which today would be designated *public law*. A second usage of the term, one encountered frequently in English language countries, restricts it to mean private law in the Roman-Byzantine tradition.

The Civil Law in this sense is very widespread. After more than a thousand years of development, at first in the Western Roman Empire and later in Byzantium, its written sources were collected selectively, ordered, and, in some respects, revised by order of the emperor Justinian in the first part of the sixth century. In this form the Civil Law survived to some extent in eastern Europe, was reintroduced into Latin Europe in the late middle ages, and eventually came to be the basis of the private law of many other localities, notably Scotland, Germany, Quebec, Louisiana, all Latin America, the Netherlands, and South Africa.

There are, nevertheless, two co-existing further refinements in the use of the term Civil Law in reference to private law. The first is that the term *civil law*, when written without capitals and not modified by the word "procedural," generally means private substantive law of the modern Roman dominated legal culture, and not the whole of the modern private law, substantive and procedural. Thus in Louisiana as in many other jurisdictions it is customary to speak of *civil law* and *civil procedure* to distinguish the substantive civil law from the procedural civil law. The second refinement is that *civil law* usually does not include commercial

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law—even though commercial law is private law—but only that applicable to persons in situations considered non-commercial. The Italians, by way of exception, include the general commercial law in the main statement of their private substantive law adopted in 1942. Italian legal writings and Italian legal education, nevertheless, continue to separate the two.

Finally, it must be observed that modern civil law is often *codified*, which is to say, expressed primarily in *codes*, or systematic and highly integrated legislated statements of the law. The *Louisiana Civil Code*, for example, contains all the basic legislation on such subjects as persons and the family, ownership and other rights in things, succession on death, and the sources of obligations between persons arising from contract, wrongful conduct, unobliged action in the interest of others, and enrichment at the expense of another without legal cause.

Not all civil law is codified. The *Jus Civile* of Rome never was codified in the modern sense, though its written sources were collected, ordered, and revised by Justinian, as mentioned before. Nor is the civil law in Scotland, San Marino, or South Africa codified. Thus *codification* is not synonymous with either *Civil Law* or *civil law*. On the other hand it is true to say that codification as encountered in modern Civil Law jurisdictions seldom exists in other places with the same degree of intensity. Often the term "code" is used in Anglo-American jurisdictions to denote a mere compilation or collection of laws in an orderly fashion, but, in my opinion, there is no codification, no "code" in the modern sense, unless the statute is highly systematized and integrated according to a unified and consistently followed conceptual framework. Thus I do not regard the Uniform Commercial Code prepared recently by the American Law Institute and already adopted in all American jurisdictions except Louisiana as having attained the status of a true code, though it approaches one; for in the last analysis it is more an orderly collection of pragmatic solutions for typical commercial fact situations than a systematic and integrated statement according to a unified and internally coherent conceptual plan.

Finally, it may be noted that modern type civil codes exist in two distinct general philosophical frameworks. In one, which usually is styled *legislative positivism*, the Code and other legislation is the sum total of the law's rules and principles, the only authoritative evidence of its content. This theory does not necessarily deny philosophical and theological criteria for order, but it does affirm that nothing not found explicitly or implicitly in the legislative texts can ever be considered law. The French theory was originally this. The other framework in which a code may exist is that in which the code and other legislation is the best evidence of the law, but not its only evidence, so that the principles of the legal tradition against which it is written may serve in its construction, application, interpretation, and extension when the legislated law is inadequate. This latter approach was certainly that of Louisiana (at a time of the *Territory of Orleans*) in 1808. In that year, we enacted a comprehensive statute on our basically Spanish substantive private law (and custom) which we called, significantly, not a Civil Code, but *A Digest of the Civil Laws Now in Force*, [that acknowledged custom to be a source of law and retained in full force all civil laws (and customs) not

irreconcilable with provisions of the Digest]. In addition, the Digest of 1808 contained a provision directing the application of "equity," defined as a resort to natural law, reason, and received usages in the absence of law (legislation and custom), thereby authorizing the use of philosophical norms in the absence of legislation, custom, or received usages. Thus the Digest of 1808 was far from expressing French legislative positivism.

[The redactors of the Civil Code of 1825 unsuccessfully sought the elimination of custom as a source of law, but repealed all those ancient civil laws on which there were articles in the new code. In 1828, however, the legislature repealed (Acts of 1828, p.160) all ancient custom and all legislation not enacted by the legislature. In 1839, nevertheless, in the decision in *Reynolds v. Swain* (13 La.193), the Louisiana Supreme Court ruled the Louisiana legislature could not repeal laws it had not enacted and made possible the resort to former civil laws for the interpretation and extension of our legislation.] Ever since then the judiciary has construed and applied the Civil Code of 1825, and that of 1870 as well, in a manner more consistent with the recognition of the Civil Law in general and the Spanish law in particular as background law for our legal order.

An attempt having been made (I) to distinguish the several connotations of *Civil Law* and *civil law* and to define *codification* in its theoretical setting, an effort may be made now (II) to indicate something of the soul of the modern *civil law*, (III) to describe some of the formal and technical aspects of modern *codified law*, and (IV) to suggest the method of study of *codified law* indicated by its formal and technical aspects.

## II. THE SOUL OF THE MODERN CIVIL LAW

It would be folly to attempt to expound the substance of the modern civil law in a few paragraphs, but some indication can be given of its spirit or soul. I see the modern civil law as dedicated to the specification of an order in which each man will be allowed to realize that maximum of personal freedom or self-determination consistent with both respect for fellow men as persons of equal dignity and the degree of cooperative life proper to the attainment of the common good in the particular cultural environment. I could have shortened this statement to one indicating the modern civil law is dedicated to liberty, equality, and fraternity, but that might have misled you into believing this civil law received its character during the French Revolution. Its principles are much older than that. They date from earliest times. The French Revolution did mark a return to principles of the Civil Law that had been eclipsed partially during the long period of feudalism, but it is not their source. Today practically no feudal influence remains in the civil law. The Common Law, by way of contrast, seems to me to be very differently oriented. I see it dominated even in this day by two factors, one its feudal origins, which continue to be manifest strongly in the law of property, especially in America, and the other, its original sole other concern, that of providing such redress or remedy as was necessary to maintain the king's peace, or to obviate civil disorder, rather than of articulating an order for the maximum securing of freedom, dignity, and

cooperation. Each of these factors has resulted in the Common Law's failure to respect human dignity, freedom, and equality in the same degree as the civil law, and the second has resulted in a failure of the Common Law to give as much respect to cooperative action. Some concrete illustrations may facilitate grasping this essential truth.

First, the civil law, [visualized in its pristine purity, before the introduction in this century of Anglo-American private trust and future interest notions,] does not permit one man to dominate another with his own private plan of order through property transfers or otherwise. Limitations on one's freedom of action must come by general law in the interest of the public good or because of one's actual incapacity as a person determined in public proceedings. Generally one is free to transfer his assets to whomsoever he pleases, but only to persons living at the time of his act, and never may he deprive his transferee of the right to manage and control his assets or to transfer them to others. On the contrary, the Common Law permits transfers to the unborn to the prejudice of the living; it permits the shifting of assets in the future to third persons according to the transferor's private scheme of order, be he living or dead, thus reducing the values of those assets to the transferees for the time being and others who might want to obtain them; and through the device of the trust, it permits the transferor to place a third person in control of the utilization and disposition of the assets given the transferee in accordance with a plan specified by the transferor. American law has been worse than English law in this respect, for whereas the English at least have permitted a trust beneficiary to terminate the trustee's control if other persons' interests would not be affected, the American law has permitted the trust to be made indestructible. American law, too, often permits the transferor to deny to his transferee the right to utilize his interest by selling it subject to the trust (as one would sell a share of stock) and even to forbid the seizure of the trust assets by the beneficiary's creditors. The civil law abhors such private schemes of order through which one person seeks to perpetuate his power over wealth after he has parted with its beneficial interest or patronizingly or maliciously denies to others the freedom consistent with human dignity; and it forbids them in the strongest terms. It recognizes that property is for the living, not for control by the dead or disinterested hand, and it insists that the transferee shall have the same possibility of dealing with assets as the transferor had. In a very real sense, I think, it insists that the goods of this world are for the service of men and not for their enslavement, even when it may be granted that the transferor is more capable than the transferee in planning their utilization.

I suspect that the Common Law's attitude in this matter can be attributed to the conditions of its development on the ruins of feudalism at a time when the English, though not possessing a legal culture of their own sufficient to supply guiding principles, nevertheless, unlike the other peoples of then civilized Europe, refused to accept the highly developed Roman Law as the basis of their own. Once feudalism, which was in reality more a system for administration of the realm than one of property, had broken down, the feudal landowners, with the aid of the Chancellors, began to extend personal power over the land which had not been

theirs in ownership, but only in stewardship. The principal institutions developed then were extended eventually even to movable things, and the whole of wealth became the object of private schemes of order held in check only at the fringe of practices easily recognized as abuses. It would be unfair to say the civil law countries did not suffer an aftermath of feudalism, but it is true that whereas the civil law countries returned to sounder principles more than a century and a half ago, England has made at most only partial reforms and American jurisdictions may have aggravated rather than ameliorated the actualities of the Common Law.

Secondly, I believe it is fair to say the civil law requires much more respect for fellow man in the matter of contract. The civil law insists that a price be substantial, at least, if not fully equal to the value of the thing sold. Sometimes a remedy is given if the value received is less than a certain fraction of the thing transferred in exchange, but in any event that exchanged for something else must have some substantial value in relation to it. The Common Law traditionally and in principle paid no attention to this, so long as something of some value, however little, knowingly was bargained for and received in the exchange. Similarly, the civil law presumes the seller warrants the fitness of the thing sold for the use for which it is intended, but the historic rule of the Common Law is that no such presumption exists. On the contrary, the Common Law cried "buyer beware." Only in recent times has a change been shown in these respects. In short, the *civil law* insists on a great deal on fairness in contract, whereas the Common Law yet contents itself largely with forbidding active deception, thus showing less regard for fellow man. Perhaps the dominant interest in maintaining the king's peace rather than insisting on right order can be detected here. And the same observation may serve to explain why it is that the Common Law generally awards damages only for failure to perform a contractual obligation whereas the civil law will generally require one to perform in accordance with his agreement if the other party so requests.

Thirdly, I think of the civil law as giving the owner of movable things much more protection than does the Common Law against being deprived of them unjustly. The civil law gives every owner the right to recover his assets wrongfully taken or detained by another, but the Common Law permits the thief or the detainer to keep the thing on paying its value. The explanation for this rule of the Common Law once more must be that system's initial primary concern with maintaining the king's peace rather than enforcing complete justice. It is noteworthy that, by contrast, possession of land was always protected as such in the Common Law, but then the interest in land was originally that of maintaining the proper feudal official in his control of the land to insure trustworthy administration of the realm. Post-feudal landowners were not likely to complain of this rule. The survival of the rule on the recovery of movables indicates the Common Law has never overcome the theoretical deficiency of its initial orientation.

Fourthly, the civil law[, outside of Louisiana if not within it,] may point with pride to its intense concern with protecting a person against insult. This has always been such a reality in civil law that Roman Law originally gave indemnification for damage to an asset on the ground the act of the wrongdoer had resulted in insult to

the asset's owner. The Common Law, on the other hand, has protected insult only to the extent it has resulted in damage to one's reputation causing economic loss. Unfortunately Louisiana, long too much influenced by the Common Law in the area of civil wrongs, does not give remedy for mere insult to one's dignity, though, like many Common Law jurisdictions, it sometimes awards indemnification for "humiliation" incidental to intentional bodily injury or property damage.

Fifthly, I think it well to point out that the civil law, from its earliest Roman days, so much respected and valued voluntary assistance to another that it would indemnify the actor his expenses if he proved his intervention reasonable and his performance diligent, whether or not it had resulted in actual benefit to the other person. No other institution of law gives greater recognition to the desirability of encouraging unsolicited worthwhile action on behalf of one's fellow man. It is to the glory of the civil law that it continues to preserve and respect this institution. The Common Law, by way of contrast, has never developed a corresponding institution. Nor has it even admitted its principle. The Common Law will often give indemnification to the extent one's action has resulted in the patrimonial enrichment of another, but even where enrichment has occurred, indemnification often is denied to the person who has acted without obligation, request, or self-interest by reason of a pious but hypocritical presumption that he must have acted with intent to donate his expenses as well as his services. Evidently where the civil law seeks to encourage cooperation even where not required or solicited, the Common Law does not.

It may be fitting, too, to note here that this institution, still most commonly known to English speaking people by its Latin name of *negotiorum gestio*, or the management of another's affairs, probably was the father of Roman consensual contract. The first Roman contracts were symbolic acts to which the law attributed consequences. Mutual agreement of itself originally was not considered sufficient to generate legal obligations. It is thought that the Romans first developed the notion of consensual contract by reasoning that the person who had acted as another's *negotiorum gestor* need not be required to show his intervention to have been a worthwhile cooperative act if the one for whom he had acted had consented to it in advance. If this is correct, and I suspect it is, then it may be affirmed that the foundation of consensual contract in Roman law, or in civil law generally, is really not the consent of the parties, but the utility of the act as one of cooperation with or service to one's fellow man. The consent then is to be visualized, as the Romans saw it, only as evidence or proof of the utility or quality of the act as one of service or cooperation. Contrast this, if you will, with the Common Law's development of consensual contract out of the notion that the failure to perform according to agreement is a "wrong" which, if not indemnified, may result in the aggrieved party's breaching the king's peace in anger, vengeance, or the attempt to obtain satisfaction.

Finally, I shall add only this, that historically the civil law has shown much more concern for familial obligations than the Common Law. Until the nineteenth century Common Law jurisdictions did not even require a parent to support his legitimate child. By way of contrast, the civil law has always obliged parents and,

to some extent, their relatives to provide for illegitimate as well as legitimate children. Keeping the peace, not fundamental justice according to an appropriate plan of order, has been the Common Law's keynote. I think the civil law has done better than that.

This brutal contrast of the souls of the civil law and the Common Law has not been made to condemn the Common Law or to deny the good it has in it. It has been made to give some idea of the superior philosophical orientation of the civil law and its greater technical sufficiency. The civil law, after all, had reached a more complete technical or formal development by the sixth century, when the Emperor Justinian compiled its sources, than the Common Law has reached today. Indeed, by the time of Augustus, through the formulary procedure introduced by the *Lex Aebutia* and the *Leges Iubiae*, the process of separating the substance of the law from its procedural remedies had already begun. American common law did not reach a comparable stage of technical development until the introduction of fact pleading in the nineteenth century, and perhaps it was not until the Restatements of the Thirties that the emphasis finally shifted from remedy to right in American Law. The Common Law is by comparison relatively young. It is true, too, that we must marvel that the judges of England, the United States, and other Anglo-oriented countries have been able to fashion so much out of so inadequate a principle as that of supplying deficiencies in existing order with the view to protecting the king's peace. It is only fair, too, to acknowledge that the "Common Law jurisdictions" have progressed far in the direction of actualizing order more cognitive of human dignity and the need for cooperative action. This movement, however, has come more from outside the Common Law than from within it. Its principles and institutions being theoretically inadequate, it has not been possible to convert the Common Law into a more satisfactory plan for societal order. Today it is primarily legislated law inspired by an increasing social consciousness which forces a change away from the traditional Common Law institutions, but it will take some time at least before the remnant influences of the Common Law's mode of development can be overcome.

## III. FORMAL AND TECHNICAL ASPECTS

It has been noted before that most modern civil law is codified law, but that some of it remains uncodified. Indeed, modern codification begins in the late eighteenth century. This does not mean that uncodified modern civil law is judge-made law. It is true that much of the Roman Law was the outgrowth of developments in the context of a judicial process, but this process differed from that of the Common Law in three major respects. First, the Roman magistrates who shaped the developments of the law were not restricted to working with forms of action narrowly oriented toward feudal administration and maintaining the king's peace. The justice of their innovations and extensions, therefore, could be more complete. The structures with which they worked reflected a more general concern with the totality of order. Secondly, under Roman procedure the magistrates who extended old actions and created new ones were not the triers of fact in the

particular controversies. Thus whereas the Common Law judges pronounced on the law only after having been exposed to all the emotional turmoil of the controversy over the facts, the Roman magistrates settled the question of law first and then sent the case to the judges for ascertainment of the facts and the application of the law as previously pronounced by the magistrate. Thirdly, in the classical era of Roman law, in its period of greatest growth, and perhaps even before as a practical matter, it was not the magistrate who pronounced on the law, but a separate jurisconsult, a person learned in the Roman legal tradition. Thus it can be said that by classical times, at least, and perhaps to some extent before, the shaping of Roman law was more in the hands of the experts in legal science than in those of the magistrates charged with its application.

This important fact has always remained true of civil law in the West. It has been a law expounded predominantly by legal scientists, not judges. Justinian, it is true, reduced Byzantine legal theory to legislative positivism when he prepared his collection of Roman juristic opinion and legislation, gave the whole the effect of legislation, forbade reference to the general background legal materials, and even burned the books containing them. But that compilation was promulgated in Western Europe only in those areas in which the Empire had managed to retain its control against the barbarian invaders after the fall of Rome itself. By the eleventh century, when Roman law in the form of Justinian's compilations was reintroduced into Western Europe, trace of the official promulgation of these compilations had all but disappeared. Roman law came back to Western Europe through the back door, through the phenomenon of Justinian's compilations being expounded, analyzed, and synthesized by the doctors at the newly arisen universities. So it was that Roman law received its revival as *taught law*, and from that time to the present, the construction, interpretation, and development of the civil law have remained more under the university faculties of law than under the judiciary. Moreover, the Roman law was presented at the universities as the very embodiment of reason concerning order in society against whose principles the law of the time and place could be appraised, and to which resort might be had for guidance when the local law was deficient or unjust by its standards. In time the commentators on the civil law, that is to say, the professors of law, acquired more authority in fact than their source material. In modern systems of uncodified civil law, scientific commentators to this day provide not only a background of legal culture, but also the materials of decision where more recent expressions of law do not provide a solution.

The role of doctrine, or legal science, did not disappear with modern codification, though the change in the authoritative materials with which the legal scientists were to work necessarily somewhat altered its mode. Pre-codification commentators worked with Justinian's compilations, which were, as the word implies, collections, and the juristic opinion and legislation there collected were largely in casuistic terms. From these materials the commentators had first to abstract and organize the principles and rules implicit in them and then to respecify the principles for application to conditions of their time. The post-codification legal scientists, on the other hand, worked with codes written in more abstract

terms. Their first task, therefore, was to expound on the implications of this relatively abstract law for the solution of concrete problems. Thus whereas the first work of the pre-codification legal scientists was to reduce the concrete to the abstract, that of the post-codification doctrinaires is to render the abstract concrete. Yet this is a matter of emphasis rather than of complete truth. In time even modern codifications grow old and, then, until legislative revision occurs, legal scientists must work, much as the pre-codification commentators did, to prescind from rule to principle and then to respecify the rule in a manner consistent with new or changed conditions of life. Development of this subject, the science and art of interpretation, cannot be made here. The only point to be made now is that, in the civil law, legal science has as important a role in the era of codification as it had before.

It cannot be otherwise if a people wish to continue to enjoy the advantages of codification. These advantages do not pertain to the substance of the law, but only to its form; for any legal substance could be codified. But the formal aspects of law can have very substantive consequences. Codification, as I see it, has the most distinctive merit of attempting to present the framework of order for a certain aspect of life in a rationally consistent, ideally complete, and reasonably intelligible abstract fashion. It would be folly to believe a statement of law could be written so well and with so much foreknowledge as to eliminate the need for construction and interpretation or periodic amendment and eventual reform. It is possible, however, to give *men of good will* a basic statement from which they can in the ordinary case, at least with the aid of counsel trained in the legal order and dedicated to its integrity, ascertain their rights and obligations within its framework without going to court or resorting to the necessity of compromise as often as otherwise might be necessary.

Of course I shall not deny we have suffered both from a widespread lack of desire to cooperate in good order and from a bar all too anxious to urge constructions favorable to a client's desires in spite of their incompatibility with projected order. Yet even here the modern code serves purposes which cannot be achieved as well in a system of uncodified law. First, the opposing parties and their attorneys, not to mention the judges, are limited to approaching their solutions within the context of the code, which poses a formal consensus to serve as major premise. Secondly, because this formal consensus is expressed largely in abstract terms, there is less opportunity for persons and their attorneys to construe it in the light of their own private philosophies and ignore the public philosophy explicit or implicit in the code itself. Thirdly, because the rules themselves tend to be abstract and general rather than casuistic and particular, it is usually easier to appreciate how they apply to new or unforeseen circumstances and conditions.

Again a contrast with the Anglo-American law will provide enlightenment. Although in America the Common Law originally was visualized as one law applicable in the several states, decisions on the Common Law differed much from state to state, partly because the judges interpreted the same materials in the light of their own varying philosophies or lack thereof and partly because honest differences of opinion existed as to the rules and principles implicit in the

decisions. The result was an extreme diversity of thought engendering an ever increasing uncertainty as to the rule of law, with a resulting tendency toward contention, litigation, and compromise. This condition may help support a large bar and judicial structure, but it does not contribute to maximum order with minimum uncertainty and contention; and this is to be our aim if we are to be concerned, as we must, with the common good rather than mutual exploitation. English common law tended to be much more disciplined and certain because it was overseen by one highest court which in theory could not reverse itself and whose decisions were binding on all lower courts; but it is notorious that English common law thus tended to become a slave to its own inadequate decisions until rescued by parliamentary action. In modern civilian codifications, the ordering of the law on the level of abstract principle and rule tends to minimize both inconveniences.

Yet I would not have you believe that this systematic, integrated, hopefully complete, abstract, and written formal consensus on an area of law—the modern code—is self-executing and foolproof. It is a tremendous aid to good order in the hands of a profession adequately oriented in its underlying principles and appreciative of the advantages of working with it and through it to the solution of particular problems of order. To the extent judges ignore it, so will the attorneys; to the extent judges respect it, so will the attorneys; for the attorney thinks of his client. But neither judges nor attorneys can be expected to visualize the particular problems before them in the full context of the posited order without the aid of the expository and synthetic materials of the legal scientists. The very nature of their work makes it very unlikely that either judges or attorneys will see the fact situations in the full context of the law unless that context is made available to them by the legal scientists, and unless they develop the habit of being guided by their writings. A code may project the very finest system of order imaginable, but if the judges and attorneys do not understand its role and function, and cooperate in making its benefits available in reality, it soon will be ignored. In that event, its place will be taken by an increasingly unsystematic and inconsistent body of decisions that will become an increasingly unreliable guide to solutions of problems of order, and eventually some predictive science, possibly based on psychology, will have to replace the law as the basic instrument of order. Indeed, such a science in the place of law already for some time has had its prophets in the Anglo-American legal world.

## IV. THE STUDY OF CODIFIED LAW

The study of the actualities of a legal system must be consistent with the mode in which it is expressed authoritatively. In the last century, Langdell, dean of the Harvard Law School, declared that inasmuch as the unenacted Common Law was evidenced authoritatively only by judicial opinions, these, and not doctrinal accounts, must be the focus of attention in the study of the Common Law. For the same basic reason the code must be the focus of attention in the study of codified law. In systems of codified law the sole authoritative statement of the law is in the

texts of the code itself. Doctrinal expositions by lecture and in writing facilitate an understanding of the codified law as a whole and in its particulars, but they remain no more than aids in the process of coming to grips with the legislated institutions, principles, and rules. No doubt, in the past especially, instruction in codified law in Louisiana has suffered greatly from the lack of local systematic doctrinal expositions written with a view toward instruction. Judicial opinions, too, if used well, can be most helpful in the process of instruction in codified law. They provide both samples of real situations to which the legislated law has had to be applied, thus permitting the student to have a vivid impression of the law in action, and samples of applications, constructions, and extensions of the legislative texts which the student can evaluate against the texts themselves, the doctrine on them, and his own observations on the texts in opposition to the existing doctrinal and previous judicial opinions. But the decisions of judges must not be given more importance than this in the study of codified law. If they are, soon the judges themselves will come to pay more attention to their prior decisions than to the legislation itself, and the very purpose of codification will be subverted and its advantages lost.

This does not in any way detract from the importance of the judge in the systems of codified law. Indeed, as was mentioned before, a system of codified law will not survive if judges are not adequate to the task of working with it or ignore it. In a very real sense it is the judge in any legal system who is most in control of the legal actualities in the concrete case. But the judge who understands his role in a system of codified law will seek to make his decisions on and within the terms and implications of the legislative texts. He will seek to do this because he appreciates the fact that, in so doing, he helps maintain a statement of the law that combines a high degree of certainty as to principle and rule with an equally high degree of flexibility and inventiveness in the application of these principles and rules to the constantly shifting and changing factual conditions of life. He works for justice according to and through a relatively simply stated official consensus on what the basic rules of law must be. He does not permit himself to be deceived into believing it is his obligation to resubmit the law to his judgment and vary it every time a controversy is brought to his attention for solution. He knows that the maintenance of a cognizable scheme of order for the common good is as important as justice in the individual case. He envisions himself as a cooperator in the process of order with justice, rather than as the oracle of justice, knowing that the ideal of justice is not realizable, especially in a pluralistic society, without an order intelligibly particularized in advance. The study of the existing law, however, is never enough for the would-be professional. He must be made conscious of his obligation to improve its imperfect statement and to encourage change in the law when new knowledge or new conditions indicate that the existing law will not do justice. To that end three kinds of effort are particularly useful. First, the student may be given some exposure to the institutions, principles, and rules of other legal systems so as to compare and contrast them with his own. Secondly, the student should be made conscious of his obligation as a man to give adequate consideration to the meta-legal sources of order so that his own

recommendations will be consistent with those sources. Thirdly, he should be given the opportunity, through appropriate exercises, to suggest how the law might be improved. In any event the student may not be allowed to rest content with the legal status quo. He must be given the capacity and fired with the zeal to improve the lot of men through the medium which will be his specialty, the law itself.