The Legal Fiction of "Clear Text" in Willis-Knighton v. Caddo-Shreveport Sales and Use Tax Commission

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"[T]here is only one term that is appropriate for characterizing the usage that the so-called doctrine of ‘clear sense of texts’ makes of the notion of clarity . . . legal fiction."1

I. INTRODUCTION

Louisiana is unique from the rest of the United States in that it is a mixed jurisdiction whose private law is principally rooted in the civil law tradition.2 Hence, one would suppose that civilian hermeneutical methods are used by courts to interpret provisions of Louisiana’s Civil Code. But are they? The recent Louisiana Supreme Court decision Willis-Knighton Medical Center v. Caddo-Shreveport Sales and Use Tax Commission,3 handed down on April 1, 2005, gives one cause to wonder. That decision constitutes a pivotal recent development in the exegesis of Louisiana Civil Code article 466, which enumerates the kinds of property considered to be “component parts” of buildings and other constructions. Justice Weimer, writing for the court, sets out what is touted as a civilian interpretation of article 466, basing his conclusion primarily on article 9 of the Civil Code: “When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature."4 In so doing, the court created a new interpretation of 466 that broke with the doctrinal and jurisprudential authority interpreting that article, as well as the legislative history,

specifically, the predecessor articles to 466 in the pre-revision Code.\footnote{The Louisiana Civil Code was revised in 1978. A.N. Yiannopoulos, Of Immovables, Component Parts, Societal Expectations, and the Forehead of Zeus, 60 LA. L. REV. 1379, 1381–82 (2000). Prior to this revision, in the Code of 1870, component parts of immovables became permanently attached through articles 467 and 469. \textit{Id.} In the revision, these articles were combined into one article: 466. \textit{Id.} For further discussion, see infra notes 146, 147.}

This comment examines the implications of the \textit{Willis-Knighton} court’s assertions and assumptions regarding proper civilian methodology. By touting its opinion as the civilian interpretation of article 466, the \textit{Willis-Knighton} court implied that the other interpretations of article 466 that have been proposed, interpretations premised in legislative history and doctrinal commentary, are not civilian. This comment disproves that erroneous implication.\footnote{The point of this comment is not to investigate whether Louisiana’s courts, in interpreting Louisiana’s private law legislation, ought to employ civilian methods. To the contrary, this comment, following the lead of the \textit{Willis-Knighton} court, takes that as a given. The court’s reasoning concedes, indeed proclaims, that Louisiana is a civilian jurisdiction and that civilian methodology is the appropriate interpretive scheme through which to consider Civil Code articles. The court’s own statement that the proper interpretive philosophy to utilize when interpreting Code articles is a civilian one specifically illustrates why the issue is not a point of contention. \textit{See Willis-Knighton}, 903 So. 2d at 1071, 1085, 1087 (repeatedly, Justice Weimer reminds us that we are in a civilian jurisdiction and advocates the use of civilian methodology).} Part II begins by delving into what is included within traditional civilian interpretive methodology, in Louisiana and globally, with a focus on the methodologies whence the Louisiana civilian interpretive tradition emerged. Part III explains the interpretive approach taken by the Louisiana Supreme Court in \textit{Willis-Knighton}, an approach that might be described as “literalist” or “textualist.” Part IV unravels and refutes the court’s notion that a literal, textualist interpretation in the analytical process of deciding \textit{Willis-Knighton} is the sole proper civilian interpretation of article 466. Lastly, Part V illustrates an equally civilian, and, in the end, superior interpretation of article 466 that
pays due homage to legislative history and doctrinal sources as applied to the facts of *Willis-Knighton.*

II. BACKGROUND ON CIVILIAN METHODOLOGY

Because Louisiana is the only state in this country with its private law firmly planted in the civilian tradition, it is an anomaly. Numerous authorities detail how the civilian tradition was funneled through the French and the Spanish legal systems to Louisiana. Though this tradition has, through the years, undergone something of a retreat, thanks to the incorporation into Louisiana law of rules and methods of Anglo-American law, the tradition is still very much alive. Further, there is a modern trend toward celebration of and emphasis on this tradition in Louisiana.

7. Within this illustration, the amended version of article 466, which the legislature created in response to *Willis-Knighton*, is taken into account. See 2005 La. Acts No. 301 (codified at LA. CIV. CODE ANN. art. 466 (2006)).

8. By an interesting linguistic coincidence, "anomaly" is defined as "a deviation from the common rule." WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 85 (1996) (emphasis added).


10. In 1938, a revived interest in the civilian tradition came about as evidenced by the 1938 La. Acts No. 166, § 4(f), by which the Louisiana State Law Institute was charged with the noble duty of translating civil law materials, providing doctrinal writings, and furthering the understanding of civilian philosophy in Louisiana. See A.N. Yiannopoulos, *Louisiana Civil Law: A Lost Cause?*, 54 TUL. L. REV. 830, 841 n.59 (1980). "The work of the Louisiana State Law Institute, the changes in curriculum at the law schools, the judicial writings of the judges, and the briefs and arguments of an increasing number of practicing lawyers all evidence a growing movement toward solidifying and extending the civilian tradition in Louisiana." Barham, *supra* note 9, at 485. Additionally, the Paul M. Hebert Law Center at Louisiana State University maintains a required joint degree program for its Juris Doctorate candidates in which they earn both the degree of Juris Doctor as well as a Bachelor of Civil
To understand why the analytical framework in *Willis-Knighton* is deficient, in particular, why the court’s implications and assertions that its interpretation is the only *civilian* interpretation are wrong, one must first understand what the term “civilian” means and in what respects the civilian tradition is distinctive.

**A. What is “Civilian”?**

This exploration into what is *civilian* begins with an understanding that “civil law” refers to the tradition of law that derives from Roman law, the *jus civile*. Originally, in the so-called formative and classical periods, the civil law consisted of Roman enacted or customary law. In the post-classical period, the civil law was associated with the various compilations of classical Roman law that were put together by Emperor Justinian—the *Corpus Juris Civilis*. In the middle ages, civil law referred to the law of the *Corpus Juris Civilis* as it had been interpreted, supplemented, and modified by the doctrine of the Glossators and Commentators. Thus, a so-called *civilian* jurisdiction in modern times refers to a state or country whose...
methodology and terminology have been decisively shaped by one or more of these various incarnations of Roman law.15

Law that is civilian is codified. As one scholar explained, "codification has four tenets: the law should be written, the law should be arranged according to some system, the law should be drafted as a ‘single fabric,’ and the law should be drafted by experts."16

Acknowledging that the Louisiana Civil Code is not merely a conglomeration of assorted, specialized statutes is vital to understanding why the approaches that are appropriate for explicating it differ from those that are appropriate for explicating mere statutes.17 Interpreting civil code articles is an exercise in historical, logical, and intellectual elucidation. Compared with statutory construction in a common law jurisdiction, interpretation of a code is a much more complex inquiry.18 Because common law rules for statutory interpretation were developed for interpreting specialized statutes, such readings tend to restrict the legislation.19 Such restriction is not appropriate for interpreting a civil code, which is, by comparison, general and abstract.20

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15. Id. at 832 (citing Max Rheinstein, Common Law and Civil Law: An Elementary Comparison, 22 REV. JUR. U.P.R. 90, 94 (1953)).


17. “A civil law code should not be confused with the general American usage of the term ‘code’ . . . . American codes are . . . ‘ordered collections of separately enacted statutes rather than unitary codes enacted as such.’” Konrad Zweigert & Hans-Jurgen Puttfarken, Statutory Interpretation—Civilian Style, 44 TUL. L. REV. 704, 708 n.13 (1970). See also Bergel, supra note 2, at 1075 (“The Louisiana Civil Code has been called the ‘most perfect child of the civil law.’”).

18. If comparison between common and civil law interpretive methodologies is made, the most correlative source of law to the Civil Code at common law is jurisprudence, not common law statutes. Zweigert & Puttfarken, supra note 17, at 709. The “methods of legal reasoning from precedents, the techniques of case law, the ways of distinguishing cases, of determining holdings and dicta, of ascertaining the ratio decidendi of previous cases, and thus finally distilling the rule of law applicable to the issues of a present case” are more akin to civilian codal interpretative methods than are common law statutory constructions. Id.

Former Louisiana Supreme Court Justice James Dennis said: “For a case based on the Civil Code to serve as a good example or precedent it must illustrate that the judge followed sound civil law methodology when he or she interpreted the Code and applied it to the case.” An elaborate history both in Louisiana and internationally supplies the context for determining what methods of interpretation are properly employed within this exercise. Because a number of other civilian jurisdictions either share Louisiana’s civilian roots, or have as their own law codes that are the very predecessors of the Louisiana Civil Code, it follows that trans., 3d ed. 2000) (“Interpretation in civil law has traditionally been less focused on the text and more accepting of arguments based on extrinsic elements such as the Codifier’s Report or the writings of legal scholars. There is no reliance on restrictive principles of interpretation.”). 20. Id. See also Zweigert & Puttfarken, supra note 17, at 706–07. 21. James L. Dennis, Capitant Lecture, 63 LA. L. REV. 1003, 1007 (2003). 22. See generally Clarence J. Morrow, Louisiana Blueprint: Civilian Codification and Legal Method for the State and Nation, 17 TUL. L. REV. 351 (1943). Additionally, the “Louisiana Civil Code presently in force is connected, through as many as ten or eleven intermediate links, to the very basic elements of western legal tradition: Roman law and the customary law that developed after the fall of the Roman empire.” Batiza, supra note 9, at 600. See also sources cited supra note 9. Consequently, it is helpful to look to not only Roman, French, and Spanish sources for illuminations of civilian methodology, but also to sources of law from other civil law countries that share civilian roots with Louisiana. Cote, supra note 19, at 552 (“When faced with a particular problem of interpretation, it is becoming ever more frequent ... for a judge to examine foreign sources . . . .”). 23. Dan E. Stigall, From Baton Rouge to Baghdad: A Comparative Overview of the Iraqi Civil Code, 65 LA. L. REV. 131, 132 n.4 (2004) (citing Richard A. Danner et al., INTRODUCTION TO FOREIGN LEGAL SYSTEMS (Richard A. Danner & Marie-Louise H. Bernal eds., 1994)) (“Belgium, Italy, the Netherlands, Portugal, Spain, countries of Central and South America, and former possessions of Belgium, France, the Netherlands, Portugal, Africa, Asia, as well as Puerto Rico, Louisiana, and Quebec are part of the Romanist-Latin legal group which share a private law based on the French Code Civil.”); Batiza, supra note 9, at 601 (the Louisiana Civil Code has roots in French, Spanish, and Roman sources). “There are a number of provisions in the Louisiana Civil Code which can be traced back to the Projet d’Olivier of 1789 through the Louisiana Code of 1825, the Digest of 1808, the French Code of 1804, the Projet of the Year VIII (1800), the Projet Jacqueminot (1799), the three Projets Cambaceres
looking to these civilian sources is helpful in understanding and applying civilian interpretive methodology.

B. The Domain of Interpretation

The theory of interpretation is a doctrine, "an intellectual construction which prescribes the manner in which the phenomenon of legal interpretation should be conceived."\(^{24}\) The theory of interpretation imposes upon the jurist a "correct theoretical mode."\(^{25}\)

Though civilian interpretive theorists differ somewhat among themselves in terms of the details, there is today a broad consensus among such theorists that sound interpretation requires the use of multiple methods. Two of the methods upon which most scholars and judges rely in civilian interpretation are the exegetical method (which consists of grammatical interpretation, logical interpretation, and historical interpretation) and the teleological method.\(^{26}\) Because these particular methods are especially pertinent to the discussion of the interpretive approach of the Willis-Knighton court, an examination of these methods of interpretation follows.

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(1793, 1794, 1796) and the Plan Durand-Maillane (1793), and then to Pothier, Domat, and ultimately to Roman law or French customary law." Id. at 596.


25. Id.

26. See Murchision & Trahan, supra note 2, at 175 (translating Francois Terre, INTRODUCTION GENERAL AU DROIT Nos. 471–73, at 474–78 (4th ed. 1998) ("Because [laws] are set forth in texts, it is normal, first of all, to resort to a 'grammatical interpretation.' Since these texts must be put into relation with their contexts, ... it is appropriate to proceed from there to a 'logical interpretation' ... Behind the letter, there is the will or spirit of the legislation ... [and] the historical [and] evolutive method[s] ... One must also observe the development of 'teleological interpretation.'"). See generally id. at 164–89; Albert Tate, Jr., Civilian Methodology in Louisiana, 44 TUL. L. REV. 673 (1970); Albert Tate, Jr., Techniques of Judicial Interpretation in Louisiana, 22 LA. L. REV. 727 (1962) [hereinafter Tate, Techniques].
1. Exegetical Method

The *exegetical* method looks to the text of legislation to interpret its logical meaning.\(^{27}\) The etymology of the term “exegetical” reveals that its roots are planted in New Latin from the Greek *exegesis*, from *exegeisthai*: to explain or interpret; exposition; explanation; especially interpretation of a text.\(^{28}\) Further, and integral to the discussion to follow, the “exegetical method,” as used for interpreting the Napoleonic Codification, called for the interpreter to “discover the true thought of the legislator.”\(^{29}\) The exegetical method, though, has often been confused with the literal method.\(^{30}\) The exegetical and literal methods differ significantly, although each adheres to the text of the law:\(^{31}\) “[W]hilst the literal approach holds that the judge should look exclusively at the words and grammar of the text of a statute in order to construe its meaning, the exegetical method looks beyond the words of the text in an attempt to determine the reasons for its enactment.”\(^{32}\)

The exegetical method does not maintain that the text alone is decisive. The text is a starting point for interpretation, but the text is not to be read literally. This method of interpretation is premised on the notion that there is logical coherence and consistency within the system of law of which the text in question is just one small part.\(^{33}\) Within the exegetical method are the elements of grammatical, logical, and historical interpretation.

*a. Grammatical Interpretation*

The grammatical method of interpretation focuses on the words of the text themselves. It “emphasizes a textual approach to the

\(^{27}\) Eva Steiner, FRENCH LEGAL METHOD 66 (2002). See also Murchison & Trahan, supra note 2, at 165 (translating Henri Mazeaud et al., LECONS DE DROIT CIVIL Nos. 100–01, at 171–72 (Francois rev. 12th ed. 2000)).

\(^{28}\) WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 795 (1986).

\(^{29}\) Murchison & Trahan, supra note 2, at 167–68 (translating Boris Starck, DROIT CIVIL: INTRODUCTION Nos. 128–31, at 55–57 (2d ed. 1976)).

\(^{30}\) Steiner, supra note 27, at 61.

\(^{31}\) Id.

\(^{32}\) Id.

\(^{33}\) See id. at 66.
thinking of the legislature." Articles 11 of the Louisiana Civil Code provides some guidance for grammatical interpretation. It provides: "The words of a law must be given their generally prevailing meaning. Words of art and technical terms must be given their technical meaning when the law involves a technical matter." Thus, while, generally, the interpreter of a law is called upon to seek the ordinary meaning of the terms used in an enactment at the time of the legislation’s adoption, where terms of art or technical terms are used, they should be accorded their received technical meaning.

The grammatical method, however, should not be confused with the literal method. The difference between the two lies in the grammatical method’s realization that the text alone is not decisive within the search for meaning.

b. Logical Interpretation

Logical interpretation focuses on a number of maxims of interpretation or, as they are known in the Anglo-American tradition, canons of statutory construction. Three examples of arguments premised in logical interpretation are explored in the following discussion. The particular maxims identified here were chosen as illustrations because they are especially pertinent to the analysis utilized in the supreme court’s decision in Willis-Knighton and to this comment’s critique of that analysis.

34. Cote, supra note 19, at 257.
36. Cote, supra note 19, at 267.
37. Tate, Techniques, supra note 26, at 730.
38. Cote, supra note 19, at 257.
39. See id. (emphasis added).
40. There are many other canons of statutory construction, for example: an argument a pari consists of applying a rule of law from a text to an unforeseen situation where the reasons for applying the law are the same as or similar to the situation for which the legislation was enacted. See Steiner, supra note 27, at 66–67; Murchison & Trahan, supra note 2, at 169. Argument by contrast, or a contrario, is the logical antithesis of an argument a pari. Steiner, supra note 27, at 66–67. It applies where a legal “text expressly provides for a particular situation” and “is assumed to have ruled out the opposite” situation. Id.; Murchison & Trahan, supra note 2, at 169. An a fortiori argument maintains that “the reasons why a statute was enacted apply with greater force in the
Two such maxims are propositions from French interpretive philosophy and can be traced back to Portalis, drafter of the *Discours Preliminaire* of the French Code Civil in 1799. They are:

(A) *Quand la loi est Claire, il faut la suivre.* Where the meaning of a statute is clear, it must be followed.

(B) *Quand elle est obscure, il faut en approfondir les dispositions pour en penetrer l'esprit.* Where the language of a statute is obscure or ambiguous, one should construe it in accordance with its spirit rather than its letter in order to determine its legal meaning.

situation currently under examination.” Steiner, *supra* note 27, at 67; Murchison & Trahan, *supra* note 2, at 170. An argument *ad absurdum*, from absurdity, promotes an interpretation that avoids unreasonable or absurd consequences: when construing ambiguous language, the interpreter should presume that the legislature did not intend absurd consequences. P. Raymond Lamonica & Jerry Jones, *Legislative Law and Procedure* § 7.3, *in 20 Louisiana Civil Law Treatise* 136 (2004); Murchison & Trahan, *supra* note 2, at 171. *Ab inutilitate*, or argument from superfluity, maintains that interpretations that render parts of legislation superfluous or redundant are not to be used. See Lamonica & Jones, *supra*, at § 7.5, at 140; Murchison & Trahan, *supra* note 2, at 171. In other words, “[e]very word, sentence, or provision in a law should be presumed as intended to serve some useful purpose and to be given effect, rather than deemed superfluous or unnecessary.” Lamonica & Jones, *supra*, at § 7.5, at 140. An argument *a rubrica* consists of taking into account the title of the legislative text. Murchison & Trahan, *supra* note 2, at 173–74. An argument *pro subjecta materia*, or argument from subject matter, is premised on the notion that legislation is to be read in context with other legislation. Lamonica & Jones, *supra*, at § 7.6, at 144; Murchison & Trahan, *supra* note 2, at 172. Similarly, *in pari materia* logic assumes coherence within the legislative scheme, and it rests on the premise that the drafter of legislation takes into account other legislation on the same subject matter. Lamonica & Jones, *supra*, at § 4.6, at 144; Murchison & Trahan, *supra* note 2, at 172–73. Louisiana Civil Code articles 12 and 13 embody these two previous concepts. Article 12 states “[w]hen the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and in the text of the law as a whole.” La. CIV. Code Ann. art. 12 (2006). Article 13 provides that “[l]aws on the same subject matter must be interpreted in reference to each other.” La. CIV. Code Ann. art. 13 (2006).

41. Steiner, *supra* note 27, at 57–58.

42. *Id.*
The first maxim is embodied within article 9 of the Louisiana Civil Code and is also known in Latin as interpretatio cessat in claris. The premise of this maxim is that "if the meaning of a statute is plain and clear, then it must be followed without any recourse . . . to interpretation." Under this interpretive guide, the interpreter is to treat the written expression as having paramount importance, so long as the text is clear.

The second maxim, importantly, qualifies the first, building upon the caveat to article 9 regarding the clarity of the text. While it assumes that the text is paramount, it maintains that where the text is obscure or ambiguous, the spirit of the law should guide interpretation and construction.

A third logical argument, "[e]jusdem generis, 'of the same kind,' reflects the idea of statutory construction that provides that where general words follow specific words in a statutory enumeration, the general words or phrases are limited to the category or class established by the specific terms." Put another way, "a generic term . . . should be restricted to the same genus as those words" in the same legislation.

All of the logical arguments are based on textual constructions of legislation. Each particular argument lends guidance to interpretation based on a different logical premise. Application of

43. LA. CIV. CODE ANN. art. 9 (2006).
44. See Murchison & Trahan, supra note 2, at 168. This maxim is the bedrock upon which the Willis-Knighton court bases its analysis.
45. Steiner, supra note 27, at 58.
46. Cote, supra note 19, at 257.
47. Steiner, supra note 27, at 58. These maxims are further examined in greater detail in Part IV of this comment, which discusses their application to the Willis-Knighton decision.
48. Lamonica & Jones, supra note 40, at § 7.6, at 146; Murchison & Trahan, supra note 2, at 173.
49. Cote, supra note 19, at 315.
50. Perhaps the most celebrated critic of these arguments was Karl Llewellyn. In his influential law review article, Llewellyn pointed out that for each of the canons there is a companion, a counterpoint, canon that negates it and that, as a result, tends to support precisely the opposite interpretation. See Karl N. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Constructed, 3 VAND. L. REV. 395, 396 (1949). Because of the existence of counterpoint canons, he denounced them as "mutually contradictory." Id. at 399. One of the canons he addresses, directly
relevant to this comment, is “[i]f language is plain and unambiguous it must be
given effect.” Id. at 403. He counters this maxim with “[n]ot when literal
interpretation would lead to absurd or mischievous consequences or thwart
manifest purpose.” Id. Further, he notes “[w]ords are to be interpreted
according to the proper grammatical effect of their arrangement within the
statute,” but “[r]ules of grammar will be disregarded where strict adherence
would defeat purpose.” Id. at 404. Additionally, “[e]xceptions not made cannot
be read,” but “[t]he letter is only the ‘bark.’ Whatever is within the reason of the
law is within the law itself.” Id. The effect of Llewellyn’s critique was to cast
the canons into a “slough of indeterminacy.” Geoffrey P. Miller, Pragmatics
According to John Manning, a law professor at Columbia, Llewellyn’s article
“largely persuaded two generations of academics that the canons of construction
were not to be taken seriously.” John F. Manning, Legal Realism & the Canons’
Revival, 5 GREEN BAG 2d 283, 283 (2002). However, he further explains that,
contrary to Llewellyn, many modern scholars “across a wide range of
philosophical approaches . . . believe that canons of construction are worth
arguing . . . for.” Id. at 294. He explains that textualists often support the
canons for ensuring stability and intelligibility of legislation. Id. Pragmatists,
too, he notes, support the use of the canons by judges to address ambiguity,
vagueness, over and under-inclusiveness, delegation, changed circumstances,
gaps, indeterminacies, and absurdities that may otherwise not be addressed. Id.
at 292, 294. Further, University of Chicago law professor Geoffrey Miller noted
the “persistence of the maxims of statutory interpretation” notwithstanding
Llewellyn’s comments. Miller, supra, at 1179. He states that while judges
have, by and large, heeded Llewellyn’s comments, the maxims have been
making a marked comeback. Id. at 1181. Professor Miller points to the
commonality of the maxims across ages and traditions. He points to principles
from 500 B.C. interpreting Hindu texts, Jewish and Christian traditional rules of
Biblical interpretation, as well as Justinian’s writings on Roman law in the
Digest, which rely upon many of the same maxims. Id. at 1183–84 (citing V.
Sarathi, THE INTERPRETATION OF STATUTES 6 (1981)); id. at 1187–89 (citing A.
Schreiber, JEWISH LAW AND DECISION MAKING: A STUDY THROUGH TIME 204
(1979) (citing explanation and translation in P. Birnbaum, DAILY PRAYER BOOK
(1973))); Id. at 1184–87 (citing St. Augustine, ON CHRISTIAN DOCTRINE Bk. III,
§ 2 (D.W. Robertson ed., 1958)); id. at 1189–90 (citing IV THE DIGEST OF
JUSTINIAN 958 (T. Mommsen & P. Kreuger eds., 1985)). In light of the
historical “durability” of the maxims, Professor Miller suggests that Llewellyn’s
critique of the maxims was overstated. Id. at 1190. See also Cass R. Sunstein,
Interpreting Statutes in the Regulatory State, 103 HARV. L. REV. 405, 452
(1989). Professor Miller also points to the writings of philosopher Paul Grice,
who founded the field of pragmatics, a study of language intended to “capture
the meaning of statements used in conversational or other social settings.”
Miller, supra, at 1191. Miller argues that maxims of statutory interpretation can
these maxims, specifically the theory of the clear text, is discussed at length in Part IV.

c. Historical Interpretation

To gain a still deeper understanding of legislation, consideration of the history of the law is pivotal. Within the study of the historical aspect of legislation, the areas of legislative history and legislative source analysis come into play. Implicit within the historical approach is the necessary understanding of the historical relevance and intent of the legislation.

i. Legislative History and Preparatory Works

Legislative history refers both to changes in the law through multiple acts of the legislature, as well as the events relating to the passage of a particular act.51 In looking to legislative history, pre-
revision legislation is a pertinent consideration. This broad swath of materials may be drawn on by courts, inasmuch as they have "authority to review legislative history materials as part of the statutory interpretation process, regardless of whether included in the case record." Further, "[s]ubsequent legislative history is relevant because the legislature presumably intends to introduce some change in the law by modifying it." This search for legislative "will" or "intent" becomes a "search for an [sic] historical meaning—a meaning which can be discovered by looking at the historical factors that surrounded the enactment . . . ." Legislative intent, discoverable through legislative history, is persuasive authority, not a true source of law. Though it is not a source of law per se, "[t]he paramountcy of the will of the author of the enactment is clearly established, a will imposed on both judge and litigant, which thereby promotes the foreseeability of legal decisions and legal certainty." Moreover, the quest for meaning leads the jurist to the will of the author.

ii. Historical Sources of Legislation

In addition to referencing the legislative history and preparatory works of the legislation at issue in a case, an interpreter must examine the sources, if any, from which that legislation was taken. The interpreter should "refer to the historical antecedents [material sources] of legislation . . . where . . . the legislation was inspired by old texts." These historical antecedents may, of course, consist of other legislation; in addition, they may consist of jurisprudence or even doctrine. In any event, the "source analysis" cannot be considered complete until the interpreter has ascertained how the source itself has been interpreted.

52. Id. at § 7.10, at 163.
53. Cote, supra note 19, at 529–30.
55. Cote, supra note 19, at 542.
56. Id. at 6.
57. Id. at 8 ("The judge cannot shirk from this search for legislative intent.").
58. Murchison & Trahan, supra note 2, at 165 (translating Alex Weill & Francois Terre, DROIT CIVIL: INTRODUCTION GENERALE 185–90 (4th ed. 1979)).
2. Teleological Method

The teleological method is that method "whereby the court seeks to identify the social purpose or objective of the legislation under consideration with a view to applying it in a way which does not conflict with this purpose." The crux of the teleological method is the determination of legislative purpose, which rests on the notion that the legislature would not enact something purely for the words of the enactment. Rather, that the legislature has taken the trouble to enact those words presupposes that the legislature had some objective in doing so. Under the teleological method, it is the role of the judge to determine those purposes and, having done that, to interpret the law in such a way as to further the realization of those purposes. Article 10 of the Louisiana Civil Code comports with

59. Steiner, supra note 27, at 64; Tate, Techniques, supra note 26, at 733.
60. Cote, supra note 19, at 375.
61. In addition to the exegetical and teleological methods explained above, there are other civilian interpretive methodologies that follow logically after these two in a more complete discussion of methodologies. Such other methodological approaches are the evolutive method, free scientific research (not an interpretive method, per se, but rather a modus operandi for proceeding when a law fails to furnish an applicable rule), and the axiological method. As they are not integral to this methodological discussion of Willis-Knighton, they receive only this incidental attention in this note. The evolutive method considers the intent of legislation and does so through the idea that evolving social and political climates would lead the legislature to have a different intent were the legislation written in the context of present day: "an interpretation based on what would probably be the intention of [the legislature] if it passed the same text today." See Steiner, supra note 27, at 65. Free scientific research is a gap—or lacunae—filling method advocated by French legal scholar François Geny wherein he suggests a "'free' but nonetheless 'scientific' approach to statutory construction which allows the interpreter to depart from the text of the . . . code when its letter fails to furnish the rule." Id. Within this process, the judge must consider the context of the society in which he lives, and should act as if he were a current legislator with the facts of the case before him, should the letter of the pertinent codal provision fall short of supplying the answer the judge seeks. See Murchison & Trahan, supra note 2, at 178–79 (translating Jean Carbonnier, DROIT CIVIL: INTRODUCTION No. 155, at 279–80 (20th ed. 1991)). Free scientific research is rarely used in practice, though it may still be relevant where there are gaps, or lacunae, in the law. Id. Lastly, the axiological method derives from the German Jurisprudence of Interests movement, which later evolved into the Jurisprudence of Values movement. James L. Dennis, Interpretation and Application of the Civil Code and the
this notion as it states: "When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law."\(^{62}\)

In addition to the exegetical and teleological methods, certain sources outside of the legislation itself are also often consulted within the interpretation of a law. What follows is a discussion of the applicability, within a civilian jurisdiction, of secondary sources of law to help guide legislative interpretation.

3. The Influence of Secondary Sources of Law

In Louisiana, as in civilian jurisdictions generally, legislation and custom are the only "true," or primary, sources of law.\(^{63}\) Jurisprudence and doctrine, by contrast, are secondary sources of law, or to speak more precisely, "mere authorities." Even so, these

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*Evaluation of Judicial Precedent*, 54 LA. L. REV. 1, 7 (1994). See also Murchison & Trahan, *supra* note 2, at 184–85 (translating Michel Fromont & Alfred Reig, 1 *INTRODUCTION AU DROIT ALLEMAND: FOUNDATIONS* 212–14 (1977) (these movements are known in German as *Interessenjurisprudenz* and *Wertungsjurisprudentz*). This method encourages the interpreter to consider "the intentions of the legislator and appl[y] the value judgments embodied in the law." Dennis, *supra*, at 6–7. An axiological judgment consists of the judge balancing all of the juridical values at work in the case before him. John Dixon, *Judicial Method in Interpretation of Law in Louisiana*, 42 LA. L. REV. 1661, 1670 (1982). There are seven axiological values that are conceptually expressed in law that should be considered by lawmakers and interpreters: justice, solidarity, cooperation, power, peace, security, and order. Cueto-Rua, *supra* note 54, at 213–14. The *Louisiana Civil Law Treatise on Legislative and Procedural Law* suggests that values are embodied in legislative enactments: "A fundamental tenant of a system predicated upon a civil law tradition is that the legislature—not the judiciary—is the governmental body elected by its constituents to enact for them the authoritative allocation of values through law." Lamonica & Jones, *supra* note 40, at § 7.4, at 137. By considering the interests the legislature has chosen to protect by the particular legislation, the interpreter may ascertain the values and interests intertwined within the legislation. Dennis, *supra*, at 9.


63. LA. CIV. CODE ANN. art. 1 (2006) ("The sources of law are legislation and custom.").
sources are of considerable influence. Consideration of these secondary sources follows.

a. Jurisprudence

Jurisprudence in which the legislation has previously been interpreted is a persuasive force for the interpreter. As Justice Tate explained, "[U]nder pure civilian theory . . . the decisions of courts are not law, but merely persuasive interpretations of it." Louisiana courts follow a doctrine known as jurisprudence constante, according to which a series of adjudicated cases that adopt one and the same interpretation is entitled to great weight.

The legislature is presumed to have been aware of judicial decisions made prior to a legislative enactment. Therefore, such decisions are contextually relevant to subsequent interpretations. As one scholar noted, "[j]udicial decisions can explain the purpose of legislative intervention and, as such, constitute an important element of the context."

The implications of the acknowledgement that legislators are aware of jurisprudence for the interpretation of the Louisiana Civil Code have been traced by Julio Cueto-Rua:

The body of judicial precedents, begun in 1825, has continued to develop to the present. There is not one body of pre-Revision jurisprudence which would serve exclusively to illustrate the old 1870 Code, and another body of post-Revision jurisprudence which would serve exclusively to illustrate the new Civil Code, created by the

64. Murchison & Trahan, supra note 2, at 100–02, 119–21 (translating Jean Carbonnier, DROIT CIVIL: INTRODUCTION No. 144, at 256, and Nos. 149–51, at 268–72 (20th ed. 1991)).
65. Tate, Techniques, supra note 26, at 743.
66. Id. at 744 (jurisprudence constante differs from stare decisis where a single case holding is binding precedent).
67. Cote, supra note 19, at 542.
68. Id.
69. Id. at 543.
later revisions. This distinction is artificial and serves no useful function.\textsuperscript{70}

Consequently, the history of the jurisprudential interpretation of the predecessor articles to the current Civil Code articles is relevant to the meaning of those articles. Cueto-Rua concluded, "[e]very civil code has its interpretative jurisprudence; the two complement each other."\textsuperscript{71}

\textit{b. Doctrine}

In the civilian tradition, doctrinal sources further the interpreter's search for legislative meaning.\textsuperscript{72} As one Louisiana judge noted, "[d]octrine to the civilian is the interpretation of law expressed in legal writings by those learned in the law."\textsuperscript{73} The influence of doctrinal writings on judicial opinions has grown since the development of the Louisiana State Law Institute, and continues to grow along with Louisiana law.\textsuperscript{74} Louisiana judges should make reference to doctrinal writings to the extent that they apply to the relevant area of the law in order to keep their opinions in line with the civil law.\textsuperscript{75} While doctrine is not a source of law, it is highly persuasive authority from which judges can, and should, garner relevant considerations of the law they are interpreting.

From this review of interpretive methodology, it is clear that civilian interpretive methodology, as it has been traditionally understood, entails more than the literal reading of legislative text. The various analytical methods presented illustrate the breadth of methodologies available to the civilian interpreter. The fact that a civilian interpreter has such extensive interpretive tools available must be acknowledged. To deny that this is so, on the pretext that there is only one such method or that one is somehow privileged over the others, is to insult the civilian tradition.

\textsuperscript{70} Julio Cueto-Rua, \textit{The Civil Code of Louisiana is Alive and Well}, 64 TUL. L. REV. 147, 171 (1989).
\textsuperscript{71} Id. at 170.
\textsuperscript{72} Cote, \textit{supra} note 19, at 551.
\textsuperscript{73} Tate, \textit{Techniques}, \textit{supra} note 26, at 739.
\textsuperscript{74} Id. at 740–42.
\textsuperscript{75} Dennis, \textit{supra} note 21, at 1007.
III. THE COURT'S ANALYSIS IN WILLIS-KNIGHTON

On April 1, 2005, the Supreme Court of Louisiana handed down a case that purported to follow civilian interpretive methodology. The tone of that decision implied that it was the civilian interpretation of Civil Code article 466; however, the holding in \textit{Willis-Knighton Medical Center v. Caddo-Shreveport Sales and Use Tax Commission} altered the face of Louisiana property law. The court's air of authority in its proclamation that what it had done was civilian underlies the apparent strength of its interpretation. The court boldly stated, "after careful review of the issue, we conclude that [article 466] must be applied as written." Though seemingly innocuous upon first reading, in holding a literal interpretation of article 466 as the law, the court deviated from doctrinal and jurisprudential authority, as well as legislative history, including the predecessor articles to 466 in the pre-revision Code. The court expressly rejected the societal expectations analysis and the disjunctive reading of the two paragraphs of article 466 that had been overwhelmingly used statewide as the test for interpreting the article. The court departed from previous jurisprudential and doctrinal authorities' analysis in the name of being civilian.

In granting certiorari, the \textit{Willis-Knighton} court was charged with determining whether nuclear cameras installed on the premises of Willis-Knighton Medical Center were component parts of the building. Whether they were deemed component parts was relevant to whether Willis-Knighton would be subject to sales and use taxes on repair and maintenance of the cameras. If the cameras were considered component parts, and thus immovables, Willis-Knighton would not have to pay the taxes, which apply only to

76. As a matter of pure coincidence, April 1st is, of course, April Fool's Day.
78. \textit{Id.} at 1075.
79. \textit{Id.}
80. \textit{Id.} at 1078.
81. \textit{Id.} at 1075, 1078 (taxes on immovables would not have to be paid by Willis-Knighton according to the relevant city ordinance).
rewards and maintenance of "tangible" personal property.\footnote{Willis-Knighton Med. Ctr. v. Caddo-Shreveport Sales & Use Tax Comm'n, 862 So. 2d 358, 364 (La. App. 2d Cir. 2003), aff'd, 903 So. 2d 1071 (La. 2005) (citing LA. REV. STAT. ANN. § 47:301(14)(g)(i)(aa) (2005) (sales of services include the furnishing of repairs to tangible personal property)). Additionally, the term "tangible personal property" has been held to be synonymous with "corporeal movable" as used in the Louisiana Civil Code. Willis-Knighton, 903 So. 2d at 1078 (citing City of New Orleans v. Baumer Foods, Inc., 532 So. 2d 1381, 1383 (La. 1988); Exxon Corp. v. Traigle, 353 So. 2d 314, 316–17 (La. App. 1st Cir. 1977), writ denied, 354 So. 2d 1385 (La. 1978)).} Willis-Knighton had already paid the taxes under protest. It requested a refund of those taxes on the theory that the cameras were component parts of the hospital building and, hence, immovable property. It was Willis Knighton's request for the return of these allegedly overpaid taxes that spawned this controversy.

The court below—the second circuit court of appeal—reversing the district court, had concluded that the nuclear cameras were not component parts of the hospital building and, on that basis, had ruled that the cameras' maintenance was subject to the sales and use tax.\footnote{Willis-Knighton, 862 So. 2d at 371.} The supreme court affirmed the second circuit's judgment. The affirmance of the judgment by the supreme court is not at issue in this comment; rather, what is at issue is the judicial method the supreme court utilized.

Civil Code article 466 governs the inquiry in this case. At the time of the supreme court's ruling in Willis-Knighton, the article read:

Article 466. Component parts of buildings or other constructions

Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical, or other installations, are its component parts.
Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached.\footnote{LA. CIV. CODE ANN. art. 466 (1979) (amended 2005). Since the \textit{Willis-Knighton} opinion, indeed, because of the \textit{Willis-Knighton} opinion, article 466 has been amended. See supra note 7, and infra Part V.}

As Justice Weimer, writing for a plurality of the justices, correctly noted, the lower court interpreted article 466 as follows:

Holding that the two paragraphs of \textit{article 466} are separate and distinct and should be applied independently to determine whether a particular object is a component part of an immovable, the court of appeal also noted that in addition to this two-step analysis, the jurisprudence has applied a "societal expectations" test to determine whether various items not enumerated in the first paragraph of \textit{article 466} should nevertheless be deemed permanently attached for purposes of that first paragraph.\footnote{\textit{Willis-Knighton}, 903 So. 2d at 1076.}

The court of appeal held that the proper inquiry under the societal expectations test was whether a society expects to see nuclear cameras in a commercial building, not a hospital specifically.\footnote{\textit{Id.}} Using this analysis, the appeals court held that the cameras were not component parts under the first paragraph of \textit{article 466}.\footnote{\textit{Willis-Knighton}, 862 So. 2d at 365.} Under paragraph two of \textit{article 466}, the court of appeal also reasoned that the nuclear cameras were not permanently attached to the building, based on the testimony of an engineer who stated there would be no damage to the cameras or the building upon removal of the cameras.\footnote{\textit{Id.} at 365–66 (citing the testimony of Mr. Wesley Smith).} This interpretation of \textit{article 466} in the second circuit's decision was harmonious with the legislative history of that article, as well as the doctrinal and jurisprudential authorities construing the article.

In the Louisiana Supreme Court's decision, Justice Weimer's opinion began its analysis by proclaiming the importance of interpreting this tax issue consistently with "our civilian property
concepts embodied in the Civil Code." Next, the court identified the proper articles to consult regarding immovable property: 465, 466, and 467. The court rightly acknowledged that article 466 has been "at the epicenter of a debate that 'raises serious questions about civilian methodology in general and specifically about the role of pre-revision jurisprudence in interpreting a revised Civil Code.' Justice Weimer identified that at the heart of this debate was the extent to which pre-revision jurisprudence should be considered in the interpretation of the current article. While it is true that this is a core issue, it would be faulty to assume that the debate about what constitutes civilian interpretive methodology, as applied to article 466, ended with the decision in this case.

In his reasoning, Justice Weimer laid out some of the historical high points of the jurisprudential and doctrinal authority interpreting article 466. According to Justice Weimer, the longstanding dispute about the meaning of article 466 must be resolved because a controversy about the article’s interpretation still exists in light of the conflict between the Federal Fifth Circuit Court decisions of *Equibank v. United States Internal Revenue Service* and *Prytania Park Hotel Limited v. General Star Indemnity Co.* In so doing, he appeared utterly civilian when he explained that "civilian methodology and the [C]ivil [C]ode instruct that the sources of law

89. *Willis-Knighton*, 903 So. 2d at 1078.
90. *Id.* at 1078–79.
91. *Id.* at 1079 (citing John A. Lovett, *Another Great Debate?: The Ambiguous Relationship Between the Revised Civil Code and Pre-Revision Jurisprudence as Seen Through the Prytania Park Controversy*, 48 LOY. L. REV. 615, 620 (2002)).
92. *Id.* at 1079–80.
94. *Equibank v. IRS*, 749 F.2d 1176 (5th Cir. 1985) (holding that the two paragraphs of article 466 must be read independently).
95. *Prytania Park Hotel*, Ltd. v. Gen. Star Indem. Co., 179 F.3d 169 (5th Cir. 1999) (holding that the two paragraphs of article 466 must be read interdependently).
are legislation and custom, and that legislation is the superior source of law.\textsuperscript{96} For this proposition he cited Civil Code articles 2 and 3.

The next step in the court’s chosen methodology was the point at which the analytical process began to derail. Justice Weimer explained:

"Legislation . . . is to be interpreted according to the rules set forth in the Civil Code. Chief among those rules is the admonition in [article 9] that “when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.”\textsuperscript{97}"

While this is indeed a maxim of civilian methodology, its application in this context was wholly inappropriate due to the flaws inherent in a literal reading of article 466, as is discussed in Part IV.

Nevertheless, the court proceeded: "A straightforward reading of the language absent any judicial gloss based on jurisprudence interpreting the pre-revision law, supports the conclusion that the two paragraphs are interdependent, with the second paragraph defining how the items enumerated in the first paragraph must be attached."\textsuperscript{98} Despite being hesitant to disagree\textsuperscript{99} with jurisprudence, as well as the interpretations of scholars A.N. Yiannopoulos and Symeon Symeonides, who have time and again explained that the paragraphs of 466 are to be read independently,\textsuperscript{100} Justice Weimer explained that he felt constrained to follow the “unambiguous words” of article 466.\textsuperscript{101} This statement of “feeling constrained” illustrates Justice Weimer’s implication that to do otherwise would have been contrary to civilian interpretation. However, resort to the theory of the clear text, though it does have civilian roots, was not the only choice Justice Weimer had if he wished to remain faithful to the civilian tradition.

\textsuperscript{96} Willis-Knighton, 903 So. 2d at 1085.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{99} In this author’s opinion, Justice Weimer was rightly hesitant.
\textsuperscript{100} See Symeonides, supra note 93, at 687–89, and Yiannopoulos, supra note 5, at 1384–87 (emphasis added).
\textsuperscript{101} Willis-Knighton, 903 So. 2d at 1086 (emphasis added).
IV. PROBLEMS WITH THE WILLIS-KNIGHTON APPROACH

The Willis-Knighton interpretive approach, although it does rely on civilian methodology, is not the only interpretive approach that merits the label "civilian." Indeed, there are other approaches to interpreting article 466 that are not only just as civilian, but also are methodologically sounder. Other approaches are preferable to the course taken by the Willis-Knighton decision because article 466 is unclear. Thus, the literal rule is an unsuitable interpretive approach to article 466. In this Part, historical, grammatical, and teleological considerations of article 466 illustrate why the Willis-Knighton literalist approach is not the most appropriate, nor the most contextually accurate, civilian interpretation of article 466.

A. Why the Willis-Knighton Court’s Analytical Approach, Though Civilian, Is Not the Only Civilian Approach, Despite an Implication That It Is, As Illustrated by the Court’s Utilization of the Plain Meaning Rule

The Willis-Knighton court repeatedly proclaimed that it was acting as "civilian methodology instructs"102 and that the civilian "heritage should not be abandoned now."103 While the court’s interpretive methodology was comprised of civilian elements, namely, reliance on certain maxims found in the Code articles, the court certainly did not take the sole civilian approach. In using article 9 to achieve a literal interpretation of article 466, the court made an interpretive choice from among the civilian methodologies available to it.

The court implied that any reading of article 466, other than its literal one, was non-civilian by arguing that the civilian tradition should not be abandoned now,104 by repeatedly insisting that it was acting as "civilian methodology instructs,"105 and by saying it was "constrained" to reason the way it did because civilian methodology

102. Id. at 1087.
103. Id. at 1106 (Weimer, J., assigning additional reasons).
104. Id.
105. Id. at 1085, 1087, 1088 (majority opinion), 1106 (Weimer, J., assigning additional reasons), and 1109 (on rehearing).
so commands. This implication, however, is wholly inaccurate. The past jurisprudence, doctrinal writings, and Justice Kimball's dissent all illustrate reasonable alternate readings of article 466. The existence of these other reasonable readings makes clear the faulty implication of the plain meaning rule.

B. Why the Willis-Knighton Approach Should Not Be Favored

In addition to the Willis-Knighton court's faulty inference that its analysis was the civilian way to interpret article 466, the court's

106. Id. at 1086. Applying a literal reading as the proper one implicitly espouses a denial of validity of other readings of the law. See Harry W. Jones, The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes, 25 WASH. U. L.Q. 2, 10 (1940) (emphasis added) ("The statement of the plain meaning rule in an actual case implies that the judgment of the court is that the decision which it has reached in the particular case is the only decision which could possibly have been made without attributing to the words of the statutory direction a meaning, that is a connotation, or denotation, wholly unjustified by accepted usages of speech.").

107. For an example of another "civilian" interpretation of article 466, see Equibank v. IRS, 749 F.2d 1176 (5th Cir. 1985). Certainly Judge Politz's decision reached in Equibank illustrates a plausible civilian interpretation. That decision held that a chandelier in a New Orleans home was a component part of the immovable property. Id. at 1180. The court looked to historical (considering legislative history and intent as seen through the Exposé des Motifs), evolutive (prevailing notions in society), logical (ab auctoritate in looking to the authority of Yiannopoulos), and teleological (seeking the purpose of the legislation as seen through the predecessor articles to 466) methodologies. Id. at 1177-80. While the court need not necessarily agree with the result reached in Equibank, it is imperative to note that the means of achieving the end, a jurisprudential decision, were civilian. To imply otherwise is to deny civilian status to any methodology besides the theory of the clear text.

108. See supra note 107. See also Willis-Knighton, 903 So. 2d at 1097.

109. Not only is the implication that other interpretive approaches are not civilian an inaccurate one, that this implication is premised in the plain meaning rule undermines the certainty of the "plain meaning" interpretation. "A statute may appear plain to one observer and ambiguous to another . . . . The fact that ambiguity may be in the eyes of the beholder apparently drains the plain meaning rule of much of its claim to certainty and consistency of application." Miller, supra note 50, at 1223–24. Additionally, "[t]he many instances in which judges have disagreed as to what the 'plain meaning' of a particular statute actually was, however, indicate that the literalistic approach is not as completely objective as it may appear to be." Jones, supra note 106, at 23 (alteration added).
construction of article 9 to support a literal reading of article 466 was grammatically, historically, and logically inferior to other civilian interpretive methodologies. Support in the supreme court’s ruling for the notion that a literal, textualist reading of article 466 under the facts of Willis-Knighton was the civilian way to interpret article 466 was premised on the argument that, under article 9, it was constrained to read article 466 “literally” and without any “judicial gloss.” The Willis-Knighton court’s approach to applying article 466 was inappropriate in the context of civilian interpretation because of the court’s seemingly inadvertent fealty, not to the theory of the clear text as known in the civilian tradition, but rather to a different breed of interpretation: strict literalism.

1. Does Article 9 Mandate That 466 Be Read “Literally”?

As previously stated, article 9 of the Louisiana Civil Code provides: “When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” While this maxim is one to which the court tightly clung in Willis-Knighton, its application in that context was faulty. Indeed, in his assignment of additional reasons for the holding, Justice Weimer argued that the text of article 466 should be applied literally and further claimed that the language of article 466 was not ambiguous. To determine why the court’s assessment of the “clarity of the text” in this case was incorrect, this doctrine must be explored more fully.

Civil law jurisdictions have a long, undeniable tradition of teaching the theory of the clear text. The maxim has its roots in

110. Willis-Knighton, 903 So. 2d at 1065.
111. The theory of the clear text, as it is known in the civilian tradition, is not limited to pure literalism. See generally Part IV.B.1.
112. LA. CIV. CODE ANN. art. 9 (2006).
113. Willis-Knighton, 903 So. 2d at 1104.
Roman law and was first applied to testamentary interpretation.\textsuperscript{115} However, the doctrine has been strongly criticized for its artificiality and inexactitude.\textsuperscript{116} Civilian scholars have explained: "Deciding a case on the basis of the plain meaning of a rule is, in terms of logic, a tautology; psychologically speaking, it is hypocrisy, for the judge who renders judgment on this ground pretends to give a reason for his decision, when actually he gives none."\textsuperscript{117} Simply, reason is not applied, but rather avoided.

The theory of the clear text is founded on the notion that the majority of texts are clear; however, this determination is artificial because clarity is itself a subjective term.\textsuperscript{118} Thus, "in reality, the recognition of the clarity of the legal text already constitutes a result of interpretation."\textsuperscript{119} As such, the distinction between the \textit{clear} text and the \textit{obscure} text is an arbitrary one.\textsuperscript{120} Obscurity or clarity of the text can emerge only once it is interpreted in light of a set of facts.\textsuperscript{121} To determine that a text is clear on its face is a subjective determination devoid of any real meaning. Even legislation that seems on its face to be clear is often the object of varying

\textsuperscript{115} Hans W. Baade, \textit{The Casus Omissus: A Pre-History of Statutory Analogy}, 20 SYRACUSE J. INT'L L. & COM. 45, 48 n.22 (1994) ("This maxim \textit{[interpretation cessat in claris]} is based on Dig. 32.25.1 \textit{in fine} where Paul is recorded as writing, in answer to a question of testamentary interpretation: \textit{cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio.}"). Additionally, this maxim has been known by different names in other civil law jurisdictions, such as the \textit{sens-klair doktrin} in Germany. See Bergel, \textit{supra} note 114, at 233. According to one German scholar, however, the plain meaning rule has fallen into "almost complete disfavor." Zweigert & Puttfarken, \textit{supra} note 17, at 712–13.

\textsuperscript{116} Bergel, \textit{supra} note 114, at 233.

\textsuperscript{117} Zweigert & Puttfarken, \textit{supra} note 17, at 713.

\textsuperscript{118} Bergel, \textit{supra} note 114.

\textsuperscript{119} Arnoldo Wald, \textit{CURSO DE DIREITO CIVIL BRASILEIRO: PARTE GENERAL} No. 38, at 98 (J.-R. Trahan trans., 2005) (4th ed. 1975) ("[T]n order to know if a given piece of legislation or juridical norm is or is not clear, we need to have recourse to interpretation. Thus in reality, the recognition of the clarity of the legal text already constitutes a result of interpretation.").

\textsuperscript{120} Guillermo A. Borda, \textit{1 TRATADO DE DERECHO CIVIL: PARTE GENERAL} No. 195, at 211 (J.-R. Trahan trans., 2005) (9th ed. 1988); Cote, \textit{supra} note 19, at 283 ("[A]n obscure text can reveal a clear rule. Inversely, a clear text can suggest a rule whose content is doubtful.").

\textsuperscript{121} Cote, \textit{supra} note 19, at 283.
interpretations over time.\textsuperscript{122} Thus, interpretation is inherently involved in the reading and application of a law. Because of the myriad sources of potential doubt regarding the sense of a juridical text, absolute textual—as opposed to contextual—clarity is unattainable.\textsuperscript{123} Historically, there has been an understanding of the need for interpretation no matter how “clear” the text. As the early Roman jurisconsult Ulpian stated: “Interpretation, it is to be noted, is always necessary: \textit{quamvis sit manifestissimum edictum praetoris}.”\textsuperscript{124}

The existence of a controversy, a “contest regarding the meaning of a norm,” as in a lawsuit, inherently reveals that interpretation must be done.\textsuperscript{125} Justice Kimball, in her dissent in \textit{Willis-Knighton}, pointed out that although Justice Weimer claimed the meaning of 466 to be plain, clear, and unambiguous, the courts have been struggling with the meaning and proper interpretation of this article for over twenty years.\textsuperscript{126} One civilian scholar noted: “[A] text is obscure . . . in a given context of enunciation and application, as long as, among the reasonable interpretations that one could give for it, some of them produce divergent solutions.”\textsuperscript{127} To claim—based on purely grammatical notions—that article 466 is “clear,” and to say that this supposed clarity must be followed because it is the

\textsuperscript{122} \textit{Id.} \textit{See also} Lamonica & Jones, \textit{supra} note 40, at § 7.4, at 141 (“But even within the supposedly strict confines of the ‘plain meaning’ rule, there is an inherent question. Sometimes it is quite apparent that more than a simple reading of the text is required to determine whether such text is ‘clear,’ ‘unambiguous,’ and does not lead to ‘absurd consequences.’”).

\textsuperscript{123} Van de Kerchove, \textit{supra} note 1. Speaking of the experiences of the Cour de Cassation, the author notes that court counselors have learned that “nothing is as rare as a legal text that is perfectly clear.” \textit{Id.} at 34. The author goes on to state that “there is only one term that is appropriate for characterizing the usage that the so-called doctrine of ‘clear sense of texts’ makes of the notion of clarity . . . that term is \textit{legal fiction}.” \textit{Id.} at 50.

\textsuperscript{124} Alberto Trabucci, \textit{INSTITUZIONE DI DIRITTO CIVILE} § 19 (J.-R. Trahan trans., 2005) (40th ed. 2001) (translator’s note: “No matter how the Praetor’s edict may be expressed” (Latin)).

\textsuperscript{125} \textit{Id.} at § 19 n.5; Cote, \textit{supra} note 19, at 289 (“[A]ppreciating the clarity of a text necessarily presupposes a prior interpretation.”).

\textsuperscript{126} Willis-Knighton Med. Ctr. v. Caddo-Shreveport Sales & Use Tax Comm’n, 903 So. 2d 1071, 1097 (La. 2005). Certainly, the courts have been struggling with the interpretation even more so since the \textit{Prytania Park} decision.

\textsuperscript{127} Van de Kerchove, \textit{supra} note 1, at 38.
civilian way to read the article ignores other aspects of civilian methodology that look to legislative intent and history. Further, it conflicts with article 10 of the Louisiana Civil Code, which provides: "When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law."128

Simply because article 9 exists does not imply the nonexistence of the rest of civilian interpretive methodology as documented in Part II of this comment. As the Louisiana civil law scholar Symeon Symeonides noted: "Although plausible, such a literal interpretation of article 466 would be historically and functionally incorrect."129 Symeonides's argument acknowledged article 9, but his analysis was premised in historical and exegetical methodologies. This analysis is not uncivilian simply because it does not employ a literalist construction of article 466. Indeed, historical and exegetical arguments are fundamental tools for use in civilian methodology. While Justice Weimer stated: "It makes little sense, as Professor Symeonides suggests, to define the phrase 'permanently attached' as having two different meanings ('temporal' and 'physical') for purposes of the same code article,"130 it only makes "little sense" under a literalist interpretation.131

a. Grammatical Analysis of the "Clear Text"

A literalist application of the theory of the clear text is grammatically flawed. This notion of discerning clarity becomes more complex when determining to what exactly the term "clear" applies. The text of article 9 directs that the clarity of the law is what is to be sought.132 What "law" in this context initially appears to mean is itself a tangle. In considering the statement "the law is

129. Symeonides, supra note 93, at 687.
130. Willis-Knighton, 903 So. 2d at 1085.
131. Cueto-Rua, supra note 54, at 207 ("[D]ifferent problems of understanding and method are raised by the temporal, spatial, material, and personal elements of juridical experience; therefore, the proper understanding of a rule of law may require the specialized assistance of experts from various fields.").
clear," whether this statement is referring to clarity of the grammar, the logic, or the intent of the law is certainly not patently obvious. Upon further inquiry, the logical conclusion is that limiting the meaning to encompass only grammatical clarity is not sufficient, though grammatical clarity is undeniably desirable. As one Belgian scholar explained, "[u]nless one reduces [the assessment of] the 'clarity' of a text to the mere syntactical proofreading of its redaction, it seems, in fact, straightaway necessary to substitute for this absolute idea of a purely textual clarity the doubly relative idea of a contextual clarity.'" Pierre Andre Cote explained, "the literal rule of interpretation seems virtually to contradict the basic principles of linguistic communication." Context is an imperative consideration in any determination of meaning. As Cueto-Rua explained, utterances, which are linguistic expressions intended to convey meaning by a person or group of persons, are inherently tied to the context in which they were spoken or written. Any doubts concerning the meaning of utterances can only be dispelled by resorting to the circumstances surrounding their making. He stated: "The utterance cannot be isolated and considered apart from the normative context in which it took place nor apart from the objective circumstances which surround the enactment of other parts of the complete rule of law." Specifically, the interpretation of words constituting juridical utterances requires reference to the context in which the laws were enacted.

In Willis-Knighton, the court assumed that the clarity to which article 9 refers was clarity only as to the grammatical composition of the law. This interpretive decision by the court is faulty. Certain practical consequences of the theory of the clear text would become

133. Van de Kerchove, supra note 1, at 19.
134. Cote, supra note 19, at 289. See also Miller, supra note 50, at 1224. This contradiction is so because understanding linguistic communication inherently takes context into account.
135. Cueto-Rua, supra note 54, at 110.
136. Id.
137. Id.
138. Id. at 147; Cote, supra note 19, at 285 ("A text can never be intrinsically clear, for clarity exists only in the mind of the reader. . . . [T]he text itself is not the only factor to be considered in evaluating clarity.").
contestable if given a literal, absolute value. Indeed, "legislation is not clear because it is so grammatically or logically, but also because it is 'just' in the case to which it is applied." Further, the possibility of a court coming to a sound conclusion based on a bare literal reading of a text is to be doubted.

b. Historical and Teleological Analysis of the "Clear Text"

A consideration of historical and teleological aspects entails looking to the history and purpose behind the legislation. In the case of article 466, scholars have argued that the history of that article suggests that "permanently attached" in paragraph one derives from the pre-revision article 467, which referred to things immovable by nature, while "permanently attached" in paragraph two of 466 derives from the second paragraph of 468 and article 469, which contemplated immovability by destination. Thus, "[a] cursory look at the sources of article 466 reveals that its two paragraphs were derived from two separate articles of the Civil Code of 1870 which provided for two distinct categories of immovables." According to these scholars, the substance of former article 467 has been reproduced in paragraph one of current article 466, and the substance of former article 469 comprises...
paragraph two of current article 466.\textsuperscript{147} They concluded: "The difference between the two former articles is now preserved in the two paragraphs of current article 466, despite a poor choice of words."\textsuperscript{148} Where other civilian interpretations, such as these, have reached reasonable contrary interpretations of article 466 based on the history of article 466, it is certain that a literal reading is not the only civilian approach appropriate for interpreting this article.

Common words are inherently ambiguous.\textsuperscript{149} Specifically, the words "permanent" and "attachment," though they are both used in the first and second paragraphs of article 466, have arguably different meanings in light of their former association with the concepts of immovability by nature and immovability by destination.\textsuperscript{150} Therefore, they are inherently ambiguous in the sense that they have reasonable, conceivable meanings beyond a literal reading that elects to assign identical meanings to those terms. Further, they cannot be read with contextual accuracy as having identical meanings. Contrary to the court's conclusion, the meanings of those words are uncertain, and, in fact, \textit{unclear}, when

\begin{quote}
may become component parts of a building without regard to the test of use or convenience of the building, even if they are attached by a non-owner." A.N. Yiannopoulos, \textsc{Property} § 142.5, in \textsc{2 Louisiana Civil Law Treatise} 325 (4th ed. 2005).
\end{quote}

\textsuperscript{147} Symeonides, \textit{supra} note 93, at 688–89 ("The second paragraph of current article 466 can be traced to, and was intended to replace, former article 469 which provided that 'movables ... affixed to the ... [building] with plaster, or mortar, or such as cannot be taken off without being broken or injured, or without breaking or injuring ... the building' are 'supposed to have [been] attached ... forever,' and thus they 'are likewise immovable[s] by destination.'"). Former article 469 contemplated a different class of movables than was considered in former article 467. The category of movables referenced in 469 required a closer level of physical attachment than did those in former article 467.

\textsuperscript{148} \textit{Id.} at 689.

\textsuperscript{149} Cueto-Rua, \textit{supra} note 54, at 96. \textit{See also} \textsc{Black's Law Dictionary} 88 (8th ed. 2004) (ambiguity is defined as "an uncertainty of meaning or intention, as in a contractual term or statutory provision").

\textsuperscript{150} Symeonides, \textit{supra} note 93, at 688 (explaining the meanings behind paragraphs one and two of article 466 as assuming different meanings of "permanent attachment"). The former context considers permanency in a temporal sense, and the latter in a physical sense.
considered more deeply than on a purely grammatical level. Determination of precisely what is meant by use of such common words implicitly requires interpretation.¹⁵¹

Additionally, even a "plain" reading of the article can yield more than one meaning. That this is so undermines the stability Justice Weimer claimed is inherent in his reading of article 466. Part of the appeal of a "black letter rule" to Justice Weimer was stability in the law.¹⁵² Because there are multiple possible literal readings of article 466, this so-called stability is undermined. The following discussion includes examples of alternative possible "literal" readings.

First, looking at paragraph one of article 466 under a plain reading, various results may be reached. This paragraph of the article reads: "Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical, or other installations, are its component parts."¹⁵³ The use of the words "such as" could reasonably lead a reader to think that component parts of a building or other construction are plumbing, heating, cooling, electrical, or other installations. "Such as" is a phrase used to give examples of things that are of a type belonging to a general category. Further, read literally, paragraph one contains no legislative directive that paragraph two be consulted in this determination whatsoever. For these reasons, under this literal reading, those things listed are things permanently attached and are component parts without further analysis.

Upon further reading, if paragraph two is read in light of paragraph one, a couple of reasonable conclusions can be reached. Paragraph two provides: "Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached."¹⁵⁴ One reasonable reading of this paragraph leads to the conclusion that there are certain things that are "permanently attached" that implicitly fall into the category of causing "substantial damage" and some things that do not. Consequently, when paragraphs one and

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¹⁵¹ Cueto-Rua, supra note 54, at 96.
¹⁵⁴ Id.
two are read interdependently, it might be concluded that the previous assumption about paragraph one's listing of things that are component parts must be faulty if all the things listed there are not necessarily component parts. If so, then paragraph one ought to be read as saying the things listed may be component parts.155

However, there is another possible reading. Instead of concluding that "substantial damage" automatically means physical damage, it may reasonably be read to indicate that what the article means is functional or operational damage. If this is the case, if removal of the thing can be deemed to cause "substantial damage," as long as the removal damages the function or operation of the building or other construction to which it is attached, then physical damage may not be required at all under the article. This conclusion remedies the aforementioned problem with paragraph one because those things listed in paragraph one that are typically not covered unless the damage was physical, would be covered under this alternative understanding of substantial damage.

Use of the literal rule is further limited by Louisiana jurisprudence contemplating article 9.156 For example, the Louisiana Supreme Court in Louisiana Municipal Ass'n v. State cited article 9, but pivotally concluded that "when the language is subject to more than one reasonable interpretation . . . the determination of the intent of the provision become[s] necessary."157 Even where the law seems to be clear and free from ambiguity, the courts have found it necessary to avoid literal interpretation.158

Regarding the application of article 466, some scholars have concluded that the history of the article clearly shows an interpretation other than the literalist one put forth in Willis-Knighton.159 Assuming that such interpretations are "reasonable," it

155. This conclusion is the one reached by Willis-Knighton. As the court reads the second paragraph of article 466 to define the first, the court essentially reads the terms "such as" and "are" out of the article. By reading in the notion that the things listed in paragraph one may be component parts depending on whether they pass muster under paragraph two, the court's interpretation actually changes the wording of paragraph one.
156. LA. CIV. CODE ANN. art. 9 (2006).
158. Dixon, supra note 61, at 1665.
159. See generally Yiannopoulos, supra note 5.
follows that the language of article 466 is ambiguous. Therefore, according to article 9, further interpretation is necessary.  

Implicit in the above discussion is the notion that legislative purpose should be taken into consideration in the interpretation of Civil Code articles. One scholar noted: "[N]o adequate case can be made out to justify the employment of the plain meaning doctrine as a flat rule of exclusion, barring resort to extrinsic evidence of legislative meaning or purpose . . ." Further, in a case such as this, where article 466 is susceptible of different meanings, article 10 mandates consideration of the purpose of the law. One scholar explained:

As the object of the exercise is to recreate the will of the legislature, the search for his intention must necessarily predominate: but the text intervenes as an authentic and solemn expression of the spirit of the law, a spirit which it serves to promote and from which it is inseparable.

Thus, a grammatical literalist interpretation is not the logical end of article 9's theory of the clear text.

Discerning legislative intent necessarily encompasses searching for legislative purpose. According to the teleological method outlined in Part II of this comment, focusing on the motivations that led to the legislative enactment of a rule of law highlights the purpose or objective of that law. As former Louisiana Supreme Court Chief Justice John Dixon explained, "[t]he legislative intent . . . or the end[s] which the legislature sought to accomplish are, of course, good tools available to the judge when he tries to discern the real meaning of a statute he must apply."

160. LA. CIV. CODE ANN. art. 9 (2006).
162. LA. CIV. CODE ANN. art. 10 (2006) ("When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.").
163. Cote, supra note 19, at 305 (quoting F. Geny, 1 METHODE D'INTERPRETATION ET SOURCES EN DROIT PRIVE POSITIF 276, (L.G.D.J. 2d ed. 1954)).
164. Cueto-Rua, supra note 54, at 176.
165. Dixon, supra note 61, at 1669.
Many scholars support this argument as they embrace the notion that legislative history, which reveals the purpose of the law, must be part of the context to be considered in the codal exegetical process. Historical meaning is that "meaning which can be discovered by looking at the historical factors that surrounded the enactment of the rule now subject to interpretation." Civilian consensus about how to determine legislative will contemplates reference to the legislative record, the historical precedents, the purpose of the legislature, and the principle on which the text depends.

Words are to be interpreted in context and according to their received meaning among those learned in the art, trade, or profession in which the words are used. The universal and most effectual way of discovering the true meaning of the law is by considering the reason and spirit of it, or the cause which induced the legislature to enact it.

166. Cote, supra note 19, at 297. Considering the possibility that the literal rule might be correct, the author concludes: “The principal aim of legal interpretation, as of the interpretation of any written text, is to discover the true, subjective intention of the author of the law... [T]his [aim], inexorably, leads to the conclusion that the task of interpretation is not to know what the terms of legislation signify, but what their author meant them to signify.” Id. See also James W. Bowers, Murphy’s Law and the Elementary Theory of Contract Interpretation: A Response to Schwartz and Scott, 57 RUTGERS L. REV. 587, 618 (2005). Interestingly, a similar contextual element has been highlighted as important in the interpretation of contracts for the purpose of retaining the sovereignty of the parties. Id. In this instance, the sovereignty of the parties can be analogized to the intent of the legislature regarding the purpose of the contract, the consequences under which the contract was intended to be enforced, or the promises the parties meant to make. Id. But see Oliver Wendell Holmes, The Theory of Legal Interpretation, 12 HARV. L. REV. 417, 419 (1899). Considering common law statutory interpretation, Holmes states, “[w]e do not inquire what the legislature meant; we only ask what the statute means.” Id.

167. Cueto-Rua, supra note 54, at 156.

168. The purpose of the legislature is also known as ratio legis. Id.

169. Additionally, the intent sought in this inquiry is the shared intent behind the legislation, not merely the intent of a single legislator. Id.

170. Dixon, supra note 61, at 1665–66. Also supporting this point is article 3 of the Spanish Civil Code, which illustrates how interpretation in civil law systems extends beyond interpreting mere norms: “The rules of law shall be interpreted according to the exact sense of their words, in relation to the context,
The *Willis-Knighton* court's decision to take a literalist approach to reading article 466 caused the court to stop short of engaging in an examination of legislative intent of this kind.\(^{171}\) Alternative civilian theories regarding the interpretation of article 466 explain that the purpose of combining the pre-revision articles into article 466 was not, as the *Willis-Knighton* court assumed, to erase the previous law regarding component parts of immovable property. Indeed, the proponents of these theories argue that the changes to the substance of pre-revision article 467 concerned *certain* changes, namely, the conversion of the list of items into one more generalized and the "elimination of the requirements of use or convenience of the building and unity of ownership."\(^{172}\) These proponents further explained that comment (e) of article 466 points out that the "substance of article 469 of the Louisiana Civil Code of 1870 'has been reproduced.'"\(^{173}\) While the comments are not the law, they are strong evidence of the legislative intent of the articles, and they can be reasonably read through civilian methodologies to reveal that parts of both pre-revision articles 467 and 469 are retained in current article 466. Justice Kimball, in her dissent, pointed out that Justice Weimer's view that the revision of 467 and 469 into article 466 was intended to make the provisions interdependent was not substantiated in the minutes of the Louisiana State Law Institute.\(^{174}\) In Justice Weimer's additional reasons, he contended that the *Exposé des Motifs* (substantively the same as revision comment (d))\(^{175}\) "suggests . . . the adoption of a single unitary test for

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the historic and legislative antecedents and the social reality of the time at which they are to be applied, with fundamental attention being given to their spirit and purpose." Benayas, *supra* note 13, at 1650.

171. Jones, *supra* note 106, at 6 ("Realistic analysis of the plain meaning doctrine . . . must be based upon full recognition that interpretation according to the literal approach does not involve any effort to discover 'the intention of the legislature,' in the sense of a meaning or purpose which the draftsmen of a statute ever actually entertained.").
175. *Id.* at 1105. *See also* LA. CIV. CODE ANN. art. 466 cmt. (d) (2006).
immobilization in 466.” This reading of 466 may be one civilian approach to reading this article; however, it is certainly not the only reasonable civilian reading. Thus, the court’s assertions that it was employing civilian methodology do not, for this reason of “being civilian,” give the opinion greater weight than any other previous interpretation of article 466. Further, though it may be “civilian,” the court’s decision disregarded the weight of evidence concerning the legislative intent behind article 466.

In light of “civilianness” not weighing exclusively in its favor, and considering the shortcomings of a literalist reading, the court showed itself to be weaker than it might at first seem. The literalist interpretation is not contextually founded, and is, thus, a logically weaker premise for a decision. From the teleological view of a law as purposive and as a means for achieving particular objectives, certainly a valid civilian perspective, the judge cannot seek “refuge in the Roman maxim ‘Dura lex, sed lex.’” This Latin maxim rests on the premise that the literal text is the law. Such a translation of the law based on the literal meaning is not the only possible civilian approach, and in light of teleological concerns, not a favored one.

c. Logical Analysis of the “Clear Text”

A literal and purely grammatical notion of the clarity of a code article takes it out of the context of the rest of the code—a clear conflict with traditional civilian exegesis. When reduced to a bare, literal, isolated reading of the words within the articles, a code presents only “floating and imprecise significations, without bearing and without stability.” Thus, clarity, when there is any, “is

176. Willis-Knighton, 903 So. 2d at 1105 (emphasis added).
178. See generally supra Part IV.B.1.b.
179. See supra note 40 regarding pro subjecta materia and in pari materia logical processes in which the context of the Code is an important factor in the interpretation of articles.
180. LA. CIV. CODE ANN. art. 12 (2006). See also supra note 40 for a discussion of the in pari materia and pro subjecta materia logical analyses.
181. Van de Kerchove, supra note 1, at 20.
inevitably attributable to the context (linguistic and situational) in which the proposition has been enunciated," and not solely on grammatical considerations. 182 Additionally, Planiol explained in his Treatise on the Civil Law, "[a]lthough the text of a law may be clear, it is possible that it may require interpretation." 183 Planiol also admitted that this interpretation may be necessary because the lawmaker may not have said what he intended to say in the legislation. 184 This observation, as it impacts logical clarity, rests on the fact that grammatical clarity is not tantamount to the logically required clarity of context or content. Thus, it is "wrong to assume that the judge first chooses rules of law by a means of a logical, quasi-mechanical process and that he then proceeds to interpret those rules only when they are not 'clear.'" 185

Taking legislation out of context is, in the abstract, logically undesirable. More importantly, though, in light of the alternate reasonable civilian interpretation of 466 as having dual meanings attributed to "permanent attachment," 186 it is possible, and perhaps likely, that the literalist interpretation applied by the Willis-Knighton court has taken as law something the legislature did not mean to say, and assumed a legislative tabula rasa behind article 466 that did not exist.

Justice Weimer explained that his compulsion to deviate from the approaches of Yiannopoulos and Symeonides and, instead, to base the court's opinion on a literal reading of article 466 was premised on "two important legislative sources that severely undermine [their] assumption." 187 He stated:

182. Id.
184. Id. See also Cueto-Rua, supra note 54, 106 n.18 (legislative text may not be indicative of the legislative intent).
185. Cueto-Rua, supra note 54, at 274.
187. Id. at 1086. The "two" legislative sources to which Justice Weimer appears to refer are: (1) the enabling legislation that created the 1978 revision articles; and (2) the comments to article 466. Id. Bear in mind, Justice Weimer refers to these sources as "positive law"; however, the legislation itself is the
The only positive law to address the issue, the enabling legislation that created the revised articles found in Title 1 of Book II of the Civil Code, Act 728 of 1978, expressly declares at Section 1: "Title 1 of Book II of the Louisiana Civil Code of 1870, containing articles 448 through 487, relative to things, is hereby revised, amended, and reenacted, substituting therefore new articles 448 through 476."

Further, he added, "Section 3 of the Act . . . provides that 'all other laws or parts of laws in conflict with this Act are repealed.'" Justice Weimer explained that this language indicated that pre-revision articles 467, 468, and 469 were subject to "implicit repeal to the extent that their content is irreconcilable with that of the new article." He further explained that the "extent to which their content is irreconcilable" with new article 466 is explained in the official revision comments to article 466. The flaw with this line of reasoning is that it plainly contradicts his analytical emphasis on the literal meaning of the legislative text in that he looked to the comments of article 466, which are not law, to aid his determination of the meaning of article 466. Per the comments to article 466, Justice Weimer continued to apply pre-revision jurisprudence in interpreting former article 469. If one is truly following the literal version of the "plain meaning" rule espoused in the decision, neither a comment, which is not law, nor the jurisprudence referred to therein, should be part of the consideration.

law, and the comments, while immensely helpful to the act of interpretation, are not primary sources of law. See id. 188. Id. (citing 1978 La. Acts No. 728, § 1). 189. Id. (citing 1978 La. Acts No. 728, § 3). 190. Id. 191. Id. 192. Pointing out this logical flaw is not intended to imply that this author endorses the literalist version of article 9. The sole purpose of this point is to illustrate the contradiction in logic the court adopted on this point. 193. See Jones, supra note 106, at 18. The following passage further suggests that the literal rule can be applied superficially to achieve results a judge desires:

The rule of literalness, as actually employed, seems a useful judicial argument in favor of exclusion, when the evidence presented in the form of extrinsic aids suggests a decision which is contrary to that
2. The Basis for Adhering to Textualism in Willis-Knighton Seems Inadvertently Not Civilian in Nature

The *Willis-Knighton* court’s adherence to strict literalism leaves one to wonder how the court could have thought that a literal interpretation of article 466 was the *only* valid civilian interpretation. Could it be that the theory of the clear text, as properly understood in civilian methodology,\(^{194}\) has been mistaken for the American brand of interpretation known as *textualism*, implemented, for instance, by United States Supreme Court Justice Scalia\(^ {195} \) in the interpretation of the United States Constitution?\(^ {196} \) As both the theory of the clear text and textualism resort to the text of the law and assume that the legislative will is encapsulated within the text, it is easy to confuse the two doctrines.

The *Willis-Knighton* court’s literal approach to applying article 466 is inconsistent with the civilian notion of the theory of the clear text, and is, instead, more akin to textualism because of its departure from the notion that the text is applied as written when it is *clear* which the interpreting judges deem just and expedient. When judges discover, in the extrinsic aids, support for what they consider a desirable addition to or subtraction from the literal meaning of the statutory language, they usually manage to make full use of it.

*Id.*

\(^{194}\) See supra Part IV.B.1.

\(^{195}\) Justice Antonin Scalia repeatedly espouses textualist interpretation. See City of Chicago v. Envtl. Def. Fund, 511 U.S. 328, 339 (1994) (“It is not unusual for legislation to contain diverse purposes that must be reconciled, and the most reliable guide for that task is the enacted text.”); Mertens v. Hewitt Assocs., 508 U.S. 248, 261 (1993) (“[V]ague notions of a statute’s ‘basic purpose’ are nonetheless inadequate to overcome the words of its text regarding the specific issue under consideration.”) (emphasis omitted); Jonathan T. Molot, *The Rise and Fall of Textualism*, 106 COLUM. L. REV. 1, 37 n.159 (citing Johnson v. United States, 529 U.S. 694, 723 (2000) (Scalia, J., dissenting) (“Our obligation is to go as far in achieving the general congressional purpose as the text of the statute fairly prescribes—and no further. We stop where the statutory language does . . . .”)).

\(^{196}\) See BLACK’S LAW DICTIONARY 1462 (8th ed. 2004) (defining “strict constructionism” as “the doctrinal view of judicial construction . . . according to [the document’s] literal terms, without looking to other sources to ascertain the meaning,” as referenced by the dictionary entry for “textualism”).
While the court’s interpretation of the theory of the clear text in *Willis-Knighton* clung to the notion that this theory advocates literalism, it read in a strict interpretation not implicit in the civilian notion of the theory of the clear text. Article 9 provides that when a law is “clear and unambiguous” the law shall be applied as written. Reading article 9 to exclusively govern the interpretation of article 466 and to command a literal reading despite the language of article 466 *not* being clear—indeed being ambiguous—transforms article 9 into a conclusive presumption. It does so by reading the words “clear” and “unambiguous” out of article 9. What occurred in the *Willis-Knighton* plurality opinion through literal reading at the expense of the application of other methodologies looks more like the common law version of the plain meaning rule.

The theory of the clear text—or technically, in this case, the plain meaning rule—as applied in *Willis-Knighton*, appears to stem

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197. See LA. CIV. CODE ANN. art. 9 (2006).
198. Id. (emphasis added).
199. The plain meaning rule, though, also has its critics. Harry Jones explains:

The plain meaning rule seems to have been intended originally, to rule out the traditional judicial doctrine of “the equity of the statute”... to avoid results which, in the opinion of an interpreting judge, were unfair or inequitable. The main effect of the rule in modern statutory interpretation, however, is that it bars resort to otherwise admissible extrinsic aids evidencing the meaning or purpose of the enacting legislators....

Jones, supra note 106, at 5. Professor Miller argues, in light of pragmatist theory, that “[t]he plain meaning rule should not be understood as based on a claim of certainty of application.” Miller, supra note 50, at 1224. He explains that, instead, the rule should refer “to a pragmatic process of weighing competing considerations: the clarity of the statutory language, its consistency with the underlying legislative purposes and whether the costs of resort to extrinsic aids ... outweigh [the] benefits.” Id. See also Robin Kundis Craig, *The Stevens/Scalia Principle and Why it Matters: Statutory Conversations and a Cultural Critique of the Strict Plain Meaning Approach*, 79 Tul. L. Rev. 955, 1037 (2005). In the constitutional context, this method is not without some criticism in application. In critiquing the strict plain meaning approach as applied by Justice Scalia, Craig explains that an “acontextual textualist” reading ignores a statute’s “dialogic dimension” and allows judges to exploit “textual imprecision and historical terms of art to impose their own meaning on the statutory language.” Id.
from a perceived blurring of the concept of a "clear" text—properly understood—in the context of a code and a strict constructionist, or textualist, interpretation. In the end, the Willis-Knighton court's approach is not only not the sole possible civilian interpretation of article 466, but it also gives some reason to wonder if it is even civilian at all.

V. A BETTER CIVILIAN EXEGESIS EXISTS

In determining how to interpret article 466 under the facts of Willis-Knighton, the tools of the civilian interpretive methods should be applied. A good place to begin this analysis is with the reasoning of the Louisiana Second Circuit Court of Appeal. That court's analysis under the facts is aligned with most interpretations regarding the context and history surrounding article 466, certainly more so than the Louisiana Supreme Court's analysis.

The second circuit recited: "Willis-Knighton [Medical Center] contends that the nuclear cameras are both 'other installations' and permanently attached to the hospital building, thus meeting either test of 466."200 Clearly, Willis-Knighton presumed that the disjunctive test for interpreting article 466 applied. In addressing the issue of whether the nuclear cameras at issue were component parts, the court rightly looked first at article 466.201 The court, fully aware of the complex history of the construction of the article, did not assume a literal reading of article 466 to be proper. Instead, the appellate court looked to jurisprudence and doctrinal sources to gain insight into the history and purpose of article 466.202 In so doing, the court explained the independent readings required of the two paragraphs of article 466: "The first paragraph declares that the enumerated installations are . . . permanently attached as a matter of law, without regard to the test in the second paragraph."203

201. Id. See also LA. CIV. CODE ANN. art. 1 (2006). According to article 1, legislation and custom are the sources of law, so it is proper to first look to the pertinent Code article. Id.
202. Willis-Knighton, 862 So. 2d at 364.
203. Id. (emphasis added).
Moreover, the second paragraph determines the permanent attachment of things not covered by the first paragraph. Additionally, the second circuit applied the societal expectations test. This interpretive approach is consistent with the purpose behind article 466 of the 1978 revision that has been articulated by scholars to consolidate former articles 467 and 469 into one article dealing with multiple ways movables become permanently attached to immovables, thereby retaining substantive elements from both former articles.

When applying the paragraphs of article 466 independently of one another, the appellate court concluded on the facts that the nuclear cameras "are neither enumerated in the first paragraph of article 466 nor deemed to be permanently attached under the second paragraph." Thus, the court stated that it "must apply the societal expectations test."

Proceeding further, the second circuit held that the district court's determination of the societal expectations test was wrong, as that court had asked what society would expect to see in hospitals as

204. Id. See also 2005 La. Sess. Law Serv. No. 301 (West) ("According to legislative intent, the two Paragraphs of [a]rticle 466 contemplate distinct tests for the classification of things as component parts . . .").

205. Willis-Knighton, 862 So. 2d at 364.

206. In looking to scholars' interpretations, the court implemented the ab auctioritate exegetical argument.

207. See Yiannopoulos, supra note 5; Symeonides, supra note 93. See also S.B. 196, 2005 Reg. Sess. (La.). In the 1978 revision, "[t]he two paragraphs of [a]rticle 466 were presented to the Council of the La. State Law Institute as two independent articles and were so adopted. However, the provisions of Title I, Book II of the Louisiana Civil Code—Things, of which [a]rticle 466 is a part, were renumbered when submitted to the legislature and the two independent [a]rticles . . . became the two paragraphs of [a]rt. 466." Id. Therefore, the combination of the articles was not intended to do anything but renumber them.

208. Willis-Knighton, 862 So. 2d at 365.

209. Id. This author believes it would be reasonable to have more fully discussed the factual basis for the determination that the nuclear cameras were neither "electrical or other installations" under paragraph one of article 466. The court does seem to have jumped to this conclusion quite rapidly. Its analysis regarding paragraph two's fact-based application is clearer as it is based on the testimony of Willis-Knighton's Director of Clinical Engineering. Id. at 365-66.
opposed to the broader category of *commercial buildings*.\textsuperscript{210} Had the district court asked the right question, the second circuit continued, it would have answered that question in the negative. Thus, the second circuit held that the nuclear cameras were not component parts of the building, reversing the district court.\textsuperscript{211}

A cursory examination of the second circuit’s reasoning reveals its coherence with article 466 as amended in the most recent session of the Louisiana Legislature. As explained in Part IV, examination

\textsuperscript{210} *Id.* This determination by the second circuit is an example of applying jurisprudence constante regarding the societal expectations test. The first time societal expectations were considered in the context of the determination of component part status of movables was in *LaFleur v. Foret*. 213 So. 2d 141, 148 (La. App. 3d Cir. 1968). In that case, Judge Tate explained that the court looked to “contemporary views as to conceptions of components in light of current house construction practices.” *Id.* at 148. Other cases also exemplify such a contextualized application of the societal expectations test. *See* *Equibank v. IRS*, 749 F.2d 1176 (5th Cir. 1985); *Coulter v. Texaco*, 117 F.3d 909 (5th Cir. 1997); *Showboat Star P’ship v. Slaughter*, 789 So. 2d 554 (La. 2001); *Hyman v. Ross*, 643 So. 2d 256 (La. 1994). In *Equibank*, when considering the component part status of a chandelier in a New Orleans home, the court looked to prevailing notions regarding whether the movable is fixed in place and whether special knowledge or expertise is needed to engage or disengage the electrical power source of the movable at issue. 749 F.2d at 1179. Because the movable at issue in *Equibank* was a chandelier in a home, the relevant societal viewpoint was that of the prudent homebuyer. *Id.* at 1180. In *Showboat*, the Louisiana Supreme Court held that the “average prudent business entity buying a vessel” would not expect . . . gaming equipment to be “permanently attached to the vessel.” 789 So. 2d at 560. In *Coulter*, the Fifth Circuit applied the societal expectations test and held that the relevant societal expectations to consider regarding an offshore drilling platform to be those of the “offshore oil and gas drilling and production industry.” 117 F.3d at 918. Regarding motel air-conditioning units, the court in *Hyman* held the relevant reasonable societal expectations were those of an “average prudent buyer of commercial property.” 643 So. 2d at 261.

\textsuperscript{211} *Willis-Knighton*, 862 So. 2d at 365. However, in his supreme court plurality opinion, Justice Weimer insists that the societal expectations test has two flaws. *Willis-Knighton Med. Ctr. v. Caddo-Shreveport Sales & Use Tax Comm’n*, 903 So. 2d 1071, 1089 (La. 2005). One problem he cites is that certainty and predictability of the law demand a less “open-ended” test. *Id.* He complains that the test is silent on whose expectation, the “average” person or “some more sophisticated party,” should be used to measure the standard. *Id.* But see *supra* note 210 for cases that illustrate that in jurisprudence that has applied the “societal expectations” standard, a test that assumes the case-specific, factually-relevant group of society is utilized.
of legislative history and its attendant jurisprudence should be an integral component of the interpretation of codal legislation. Because the second circuit's analysis comports with the legislative intent of the amended version of article 466, that court's interpretation is of continuing relevance. Indeed, the Louisiana Bill Digest regarding new article 466 states that the "new law provides that the proposed provisions are intended to clarify and re-confirm the interpretation of [Civil Code] article 466 . . . that prevailed prior to the [supreme court's] decision in *Willis-Knighton*. . . ."

Because the appellate court's decision was in line with this prior prevailing interpretation, the analysis in that decision, too, is implicitly confirmed by the amendment of article 466. Article 466 now reads:

Article 466. Component parts of an immovable

Things permanently attached to an immovable are its component parts.

Things such as plumbing, heating, cooling, electrical or other installations, [sic] are component parts of an immovable as a matter of law.

Other things are considered to be permanently attached to an immovable if they cannot be removed without substantial damage to themselves or to the immovable or if, according to prevailing notions in society, they are considered to be component parts of an immovable.213

Both the appellate decision and amended article 466 are consistent with civilian methodology.

In light of the considerations of civilian interpretive methodologies discussed in this comment, the apparent flaws associated with the Louisiana Supreme Court's literal reading of article 466 in *Willis-Knighton* have been illustrated. Thus, it has become apparent that the *Willis-Knighton* decision was not the only, nor the most sound, civilian interpretation of Louisiana Civil Code article 466.

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VI. CONCLUSION

Discourses become incommensurable with one another, when something beyond simple disagreement reigns. Such disagreement is not limited to the minutiae of a particular rule or statute, but concerns the general rules of the game. At this point, the hegemonic "discourse" becomes multiple "discourses," and debates are conducted by listeners and speakers who no longer share a common grammar.  

The conversation in Louisiana law revolving around what is civilian, especially in the context of "methodology," has been marred by such incompatible discourses. Balance and context are surely the keys to performing the job of the interpreter properly: both have integral parts to play in the interpretation of a code. This comment has presented the ills of relying too heavily on text alone. It has illustrated a civilian interpretation that, though premised in the text, nevertheless applies traditional methodology to the text to ensure the reading is a contextually proper one logically, teleologically, and traditionally. In the end, there is much more to civilian interpretive methodology than literalism.

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* A gracious thank you to all who have supported me while writing this comment, especially my faculty advisor Professor Randy Trahan, Professors Paul Baier and Jim Bowers in the Legal Scholarship Seminar, and Professor A.N. Yiannopoulos of Tulane University who also provided comments and support of my work. I am also eternally grateful for the love and support of my family and my husband Jeremy.