

## Louisiana Law Review

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Volume 76 | Number 4

*Liber Amicorum: Alain A. Levasseur*

*A Louisiana Law Review Symposium of the Civil Law*

*Summer 2016*

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# The French Reform of Contracts: An Opportunity to Tie Together the Community of Civil Lawyers

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### Repository Citation

Michel Séjean, *The French Reform of Contracts: An Opportunity to Tie Together the Community of Civil Lawyers*, 76 La. L. Rev. (2016)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol76/iss4/12>

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# The French Reform of Contracts: An Opportunity to Tie Together the Community of Civil Lawyers

Michel Séjean\*

## INTRODUCTION<sup>1</sup>

In 2014, in front of the French Senate, Minister of Justice Christiane Taubira made the following stark statement regarding the French law of contract's loss of influence:

As you all know, a battle of influence has been waged in Europe, in particular between our continental law—the strength of our law as it is written and designed—and what we call the *common law*—which has its own influence, its approach of services and of certain professions. This battle has been waged daily and will be waged permanently. Our contract law no longer inspires anybody in the world—those that drew inspiration from it have already moved on to the next step!—let us not be surprised at our loss of influence. Yet, for a long time and on a large scale, France used to influence Europe and the world through law.<sup>2</sup>

These words trigger some discomfort. Instead of approaching the relationships between civil law and common law with a metaphor on war—whose outcome implies the winner's superiority over the loser—it would certainly have been more appropriate to promote civil law as a perfectly valid alternative to any other legal tradition, including common

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1. At the time this Essay was written, the Ordinance of February 10, 2016 had not yet been published, and the relevant source was the Draft Reform of February 25, 2015. Because of editorial constraints, the Author made no changes to the original version of this Essay, even though the 2016 Ordinance modifies many aspects of the 2015 Draft, including some parts that the Author criticized.

2. 2014 JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE: SÉNAT 632 (daily ed. Jan. 23, 2014) (statement of Sen. Taubira), available at <http://www.senat.fr/séances/s201401/s20140123/s20140123.pdf> [https://perma.cc/8JYT-Z75Q] (Author's translation); See generally CONSEIL D'ÉTAT, L'INFLUENCE INTERNATIONALE DU DROIT FRANÇAIS (2001), available at <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/014000702.pdf> [https://perma.cc/UY9B-KY9K] (discussing this loss of influence on a global scale).

law, without suggesting that it be a superior system of law or dragging the debate on a confrontational ground.

In addition, the mere questioning of the French influence abroad may be suspected of reflecting nostalgia of France's former hegemony, especially in the light of the reasons why the French Civil Code was so influential in the nineteenth century and in the first part of the twentieth century.<sup>3</sup> Of course, no one denies France's former influence through its Civil Code. According to Zweigert and Kötz, "[o]ther great codes came into force in Central and Western Europe at the end of the eighteenth and the beginning of the nineteenth centuries, but beyond doubt the French Civil Code is intellectually the most significant and historically the most fertile."<sup>4</sup> But the reasons for this fertility could not be replicated. These reasons are threefold, as Michel Grimaldi explained:<sup>5</sup> the Napoleonic Code exported its influence abroad (1) through the force of arms,<sup>6</sup> (2) through a voluntary assent from peoples attracted to the spirit and the heart of the French culture,<sup>7</sup> and (3) because it was the only Code situated to become a model for other countries.<sup>8</sup>

Because none of these reasons endured throughout the twentieth century, however, the French Civil Code gradually lost its influence when other countries updated or upgraded their own civil codes, such as the Netherlands in 1992 or Quebec in 1994.<sup>9</sup> In the twenty-first century, the French Civil Code has not regained its former influence. For example, the 2011 Romanian Civil Code openly drew its inspiration from the 1994 Quebec Civil Code.<sup>10</sup>

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3. See generally THE INFLUENCE OF THE FRENCH CIVIL CODE ON THE COMMON LAW AND BEYOND (Duncan Fairgrieve ed., 2007); Xavier Blanc-Jouvan, Lecture, *Worldwide Influence of the French Civil Code of 1804, on the Occasion of Its Bicentennial Celebration*, CORNELL L. SCH. BERGER INT'L SPEAKER PAPERS, Sept. 27, 2004, at 1.

4. KONRAD ZWIEGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW 85–86 (Tony Weir trans., Clarendon Press 3d rev. ed. 1998).

5. Michel Grimaldi, *L'exportation du Code civil*, POUVOIRS, Nov. 2003, at 80.

6. *Id.* at 81–82.

7. *Id.* at 82–84.

8. *Id.* at 84–85.

9. See Xavier Blanc-Jouvan, *L'influence du Code civil sur les codifications étrangères récentes*, in THE INFLUENCE OF THE FRENCH CIVIL CODE ON THE COMMON LAW AND BEYOND, *supra* note 2, at 365–400. For Louisiana, see Agustín Parise, *Codification of the Law in Louisiana: Early Nineteenth-Century Oscillation Between Continental European and Common Law Systems*, 27 TUL. EUR. & CIV. L.F. 133 (2012).

10. See generally Iolanda Boți & Victor Boți, *Code Civil du Québec et ses Influences dans la Réforme du Code Civil Roumain [The Quebec Civil Code and Its Influence on the Reform of the Romanian Civil Code]*, 19 BULETIN ȘTIINȚIFIC [SCI. BULL.] 52 (2010); see also Ewoud Hondius, *Recodification of Private Law in Central and Eastern Europe and in the Netherlands*, 2014 ELTE L.J. 51, 53.

While the French Civil Code was losing its influence abroad, its sway was also weakening in France during the second part of the twentieth century despite an attempt to reform it in 1948.<sup>11</sup> French contract law developed outside the confines of the Civil Code through judge-made law,<sup>12</sup> in non-codified statutory provisions, or in other codes, such as the 1993 Consumer Code.<sup>13</sup>

This law outside the French Civil Code leads to examining what the current reform of contracts is aiming to achieve aside from this regrettable reference in official speeches to France's former influence. In its latest version,<sup>14</sup> the reform aims at enhancing French contract law's intelligibility, predictability, and attractiveness.<sup>15</sup> To that end, the Ministry of Justice made a considerable effort to reach out to other civil law countries, by ordering a translation of the February 25, 2015 draft ordinance into three languages: English, Spanish, and Portuguese.<sup>16</sup> The Chancery's endeavored to submit a final draft whose legitimacy would suffer no contestation. In this respect, since the official draft was published, the French Chancery in charge of the reform received approximately 150 papers in reaction to the draft. These reactions came from scholars, lawyers, interest groups, think tanks, and ordinary citizens, and the question remains whether the French Chancery will process this feedback and use it to consider modifying the draft. If the Chancery manages to make the best out of this public feedback and modifies the text

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11. See generally Léon Julliot de la Morandière, *The Reform of the French Civil Code*, U. PENN. L. REV. 1 (1948).

12. Some examples include the pre-contractual phase of negotiations and the rules on offer and acceptance.

13. See Bénédicte Fauvarque-Cosson, *The French Contract Law Reform in a European Context*, 2014 ELTE L.J. 59, 60–65.

14. For a presentation of all the recent attempts to reform the law of obligations and evidence in France before the 2015 draft, see Fauvarque-Cosson, *supra* note 12, at 60–65.

15. See “*Une remise à niveau du droit écrit français redonne l’occasion à la France d’exercer son influence*”: *Entretien avec Carole Champalaune, directrice des Affaires civiles et du Sceau*, DROIT & PATRIMOINE, Mar. 2015, at 10 (Interview with Carole Champalaune, Director of Civil Affairs and the Seal) (“This reform is the end of a ten-year ripening process and represents a stake of justice for the 21st century. It pursues three objectives: intelligibility of the law, its predictability and its attractiveness.” (Author’s translation)).

16. The English translation is the work of Professors Bénédicte Fauvarque-Cosson (University Panthéon-Assas, Paris-II), Simon Whittaker (Oxford University), and John Cartwright (Oxford University). MINISTÈRE DE LA JUSTICE, RÉPUBLIQUE FRANÇAISE, DRAFT ORDONNANCE FOR THE REFORM OF THE LAW OF CONTRACT, THE GENERAL REGIME OF OBLIGATIONS, AND PROOF OF OBLIGATIONS arts. 1102, 1103 (J. Cartwright, B. Fauvarque-Cosson & S. Whittaker trans., 2015) [hereinafter DRAFT ORDONNANCE], available at [http://www.textes.justice.gouv.fr/art\\_pix/Draft-Ordonnance-for-the-Reform-of-the-Civil-Codepdf.pdf](http://www.textes.justice.gouv.fr/art_pix/Draft-Ordonnance-for-the-Reform-of-the-Civil-Codepdf.pdf).

accordingly, it will be an unparalleled effort to achieve better legitimacy. One could only hope that these contributions be published so that the public can better help better understand the forces behind what will be the new general law of contracts. As these lines are written, the question of whether this public consultation will inspire anybody is pure speculation. The first part of this Essay shows that it is clear, however, that the reception of the draft by foreigners shows that the quest for influence belongs to the past. In the second part, the Essay suggests a more beneficial consequence of the ongoing reform: the perspective of a soon-to-be enacted reform creates a unique opportunity to tie together the community of civil lawyers around the world through translation of the future law into an English language whose terminology reflects the peculiarities of civil law. As will be seen, Professor Levasseur is the mastermind behind this awareness of the English terminology of civil law.

### I. THE OUT-OF-DATE QUEST FOR INFLUENCE

In a special 2015 issue on the draft reforms, the French legal journal *La Revue des contrats* invited scholars from seven different countries to share their views on current French contract law and on its envisaged reform. Germany,<sup>17</sup> England,<sup>18</sup> Argentina,<sup>19</sup> Chile,<sup>20</sup> Columbia,<sup>21</sup> Italy,<sup>22</sup> and Canada<sup>23</sup> were all represented in this study. Even though these foreign experts analyzed most of the draft reform, only a tiny number of provisions seemed innovative and worth copying. Draft article 1223, regarding the reduction of the price in case of a failure to fully execute the contract, is one of these provisions.<sup>24</sup> According to this tentative provision:

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17. Jens Kleinschmidt & Dominik Groß, *La réforme du droit des contrats: perspective allemande sur la balance délicate entre liberté contractuelle et pouvoirs du juge*, 2015 REVUE DES CONTRATS 674.

18. John Cartwright, *Un regard anglais sur les forces et faiblesses du droit français des contrats*, 2015 REVUE DES CONTRATS 691.

19. Sebastián Picasso, *L'exécution forcée des obligations contractuelles – Brève étude comparative des droits français et argentin*, 2015 REVUE DES CONTRATS 700.

20. Carlos Pizarro Wilson, *Les remèdes à l'inexécution contractuelle dans la réforme du droit des contrats en France: regard d'un juriste chilien*, 2015 REVUE DES CONTRATS 706.

21. Fabricio Mantilla Espinosa, *Regard colombien sur la cession de contrat en droit français*, 2015 REVUE DES CONTRATS 711.

22. Michele Graziadei, *Le contrat au tournant de la réforme: les choix du juriste français et le précédent italien*, 2015 REVUE DES CONTRATS 720.

23. Benoît Moore, *Libres propos d'un juriste québécois concernant le projet de réforme des contrats*, 2015 REVUE DES CONTRATS 728.

24. DRAFT ORDONNANCE, *supra* note 16, art. 1223.

A creditor may accept an imperfect contractual performance and reduce the price proportionally.  
If he has not yet paid, the creditor must give notice of his decision as quickly as possible.<sup>25</sup>

Benoît Moore, a professor at Montréal University in Canada, considers this unilateral and extrajudicial price reduction (*réfaction unilatérale extrajudiciaire*) a useful addition to preserve the existence of the contract instead of destroying it.<sup>26</sup> The same applies to draft article 1163 on the unilateral fixation of the price in framework contracts and in contracts providing for periodic performances,<sup>27</sup> the innovation being that the judge may “adjust the price on the basis of the usages, the market prices or the legitimate expectations of the parties.”<sup>28</sup> Benoît Moore expresses the wish that Quebec judges draw inspiration from this “modern view of the contract.”<sup>29</sup>

Apart from this rare suggestion that some of the reform might be inspiring, not many signs suggest that countries would view the reform’s content as an opportunity to curb their own habits, which shows that the quest for influence is passé, so to speak. The same applies to countries that are closer to France in location and culture, including Belgium and Luxembourg, even though both countries have operated on the same civil code, a look-alike of the 1804 French Civil Code.

Usually every French initiative concerning civil law has consequences in Belgium: as the old saying goes, when it rains in Paris, it drizzles in Brussels.<sup>30</sup> Belgium’s ambition, however, is currently far greater than France’s desire to limit its revision to contract law and the law of evidence; the Belgian Minister of Justice has recently suggested that an appropriate reform of the Belgian Civil Code should encompass not only contract law,

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25. *Id.*

26. Moore, *supra* note 23, at 731.

27. DRAFT ORDONNANCE, *supra* note 16, art. 1163 (“In framework contracts or contracts whose performance is successive it may be agreed that the price of the act of performance will be fixed unilaterally by one of the parties, subject to the requirement that the latter must justify the amount if it is challenged. In the case of an abuse in the fixing of a price, a court may hear a claim for the revision of the price taking into account usual practices, market prices or the legitimate expectations of the parties, or for damages and, in an appropriate case, for the termination of the contract.”).

28. Moore, *supra* note 23, at 731–32 (citing DRAFT ORDONNANCE, *supra* note 15, art. 1163) (Author’s translation).

29. *Id.* at 732 (Author’s translation).

30. “Quand il pleut à Paris, il bruine à Bruxelles.” É. Dirix & P. Wéry, *Pour une modernisation du Code civil*, JOURNAL DES TRIBUNAUX, Sept. 26, 2015, at 625. The Author would like to thank his dear colleague and friend Prof. Isabelle C. Durant (from the Université catholique de Louvain, Belgium) for helping him.

but also property law, extra-contractual liability, the law of evidence, the law of suretyship, and the provisions on loans.<sup>31</sup> Could a drizzle in Paris trigger showers in Brussels? It would be a sign of the times.

As for Luxembourg, its civil code only has minor differences with the French one,<sup>32</sup> and even though “French law can no longer be considered as serving as an exclusive model to the legislator of Luxembourg,”<sup>33</sup> “there remains a tendency with him to seek its reformist inspiration in France, to the point where it sometimes recopies the French provisions in full.”<sup>34</sup> To this day, however, no signs would show that Luxembourg has any desire to follow France’s lead on the reform of contracts.<sup>35</sup>

In other words, it is pointless to seek a codification that inspires other countries to change their own legislation and “import” a number of institutions from this updated contract law.

One reason for other countries’ moderate enthusiasm is that France has waited for more than 200 years before it recodified its general law of obligations. In comparison, Louisiana enacted a new law of obligations in 1984, the Netherlands in 1992, Quebec in 1994, Germany in 2002, and Romania in 2011. One cannot expect those countries to peek at the French reform as if they were already tired of their recently renovated civil law.

The second reason is that this recodification is mostly an update of existing solutions and not reflective of France entering a new era. Conversely, the Napoleonic Code, the 1900 German Bürgerliches Gesetzbuch, and the recent Codes from former Soviet-Union countries heralded changing times. As Laurent Aynès explained, “they [were] a political gesture, a year I of a new order. Although they [did] not invent everything, they [intended] to express a change and they [reflected] a view of societal life.”<sup>36</sup> In 2015, according to Aynès, “there are no new times to celebrate, the sight has never been so short, the confidence in the future has never been so fragile, and the political life reduced to such a petty management of deficits or electoral considerations.”<sup>37</sup>

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31. *Id.*

32. See Pascal Ancel, *Le droit luxembourgeois des contrats, un droit sous influence(s)*, 2014 REVUE DES CONTRATS 295.

33. *Id.* at 297 (Author’s translation).

34. *Id.* (Author’s translation).

35. This only comes as half a surprise, given that Luxembourg now has its own law school and trains its lawyers in comparative law as well as with foreign influences, as Pascal Ancel stated. *Id.* at 302. The Author would also like to thank Professor Gilles Cuniberti (Université de Luxembourg) for giving him a thorough background on the law of Luxembourg, and for confirming to us that there was no particular interest in the French Draft Reform as of November 2015.

36. See Laurent Aynès, *La réforme projetée du droit des contrats: synthèse*, DROIT & PATRIMOINE, Mar. 2015, at 55–56 [hereinafter Aynès (2015)] (Author’s translation).

37. *Id.* (Author’s translation).

The current recodification would therefore fit in the category of “compilations” instead of true codification or recodification,<sup>38</sup> even though a few innovations have occurred in this new contract law.<sup>39</sup>

The third reason is that the adjective that characterizes French contract law in 2015 is not so much “influential” as it is “influenced.” Draft article 1217, for instance states that: “Remedies which are not incompatible may be combined; damages may be added to any other remedy.”<sup>40</sup> This language seems directly inspired by article 8:102 of the Principles of European Contract Law (2002), whereby “Remedies which are not incompatible may be cumulated. In particular, a party is not deprived of its right to damages by exercising its right to any other remedy.”<sup>41</sup> A close look at the former attempts to reform French contract law—in particular the *Catala Projet*, the *Terré Projet*, and the 2008 *Chancellerie Projet*—shows that the movement of recodification has increasingly opened its doors to more international content (UNIDROIT Principles) and to more European content, whether European Union substantive law or drafts such as the Principles of European Contract Law or the Draft Common Frame of Reference.<sup>42</sup>

A controversial sign of this influence is the suppression of *la cause*<sup>43</sup> in the draft reform, on behalf of the so-called modernization of French contract law. Opponents to this disappearance argue that *la cause* was the most tangible sign that French contract law remained influential in many civil law countries.<sup>44</sup> These opponents regret the process that consists of

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38. See generally Olivier Moréteau & Agustín Parise, *Recodification in Louisiana and Latin America*, 83 TUL. L. REV. 1103 (2009).

39. DRAFT ORDONNANCE, *supra* note 16, arts. 1163, 1223.

40. *Id.* art. 1217.

41. PRINCIPLES OF EUROPEAN CONTRACT LAW art. 8:102, at 70 (Ole Lando & Hugh Beale eds., 2002).

42. See Fauvarque-Cosson, *supra* note 12, at 62–65.

43. See GÉRARD CORNU, DICTIONARY OF THE CIVIL CODE 90–91 (Alain Levasseur et al. trans., 2015) [hereinafter DICTIONARY OF THE CIVIL CODE] (“Interest of the juridical act for its author (*cause finale* – final cause), corresponding: [a] When it comes to assessing the \**licéité* – lawfulness or the morality of this legal act, [it corresponds] to the individual *mobile* – motive, which is concrete and variable for the same type of act from one person to another (one purchases a house to live in it, another to lease it, and another to resell it); one speaks of the impulsive and decisive cause or concrete cause, which is purely subjective. . . . [b] When it comes to verifying the existence of the cause, [it corresponds] to the legal effect inherent in the act, which is an abstract consideration more objective and invariable for the same type of act (ex. for the purchaser, the acquisition of ownership; for the seller, the receipt of the price); it is referred to as the \**cause abstraite* – abstract cause, the \**cause objective* – objective cause, (but it is always the final cause).”).

44. Belgium, Spain, Italy, Romania, Bulgaria, Peru, Venezuela, Argentina, Quebec, Lebanon, and others. See Thomas Genicon, *Notions nouvelles et notions*



“smoothing over all the bumps and erasing all the words that may cause annoyance, which results in a dull reform.”<sup>45</sup> As Bénédicte Fauvarque-Cosson explained, however, “as common general trends develop in modern laws of contracts, national codifications or recodifications no longer are a tool for legal nationalism; quite the contrary.”<sup>46</sup> Legal nationalism has dissolved in the contemporary phenomenon called “the internationalisation of the law,”<sup>47</sup> whereby legal orders are intermingled and sometimes integrated in one another, as is the case with the European Union and the European Convention on Human Rights. The French reform of contracts will not serve legal nationalism in a world where legal systems are more and more hybrid.

Finally, a fourth reason why the French reform has inspired no enthusiasm abroad may be found in the fact that the foreign scholars audited *the draft*, not the actual reform itself. A lawyer or a scholar is supposed to show skepticism when reading a draft. After all, it is his or her job to warn the decision-makers on the dangers that may be hidden in the text. But it would be interesting to ask again, when the reform is enacted, what these authors’ insight is. When the draft becomes an actual statute, the scholar’s essential job is no longer about warning others on the dangers of the text, but instead is about finding what margins of maneuver there are. Scholars must also help the users of the statute to make the most out of the new law.

As a result, it is possible to say that the quest for influence is out of date, at least if influence is seen as a unilateral way to impose on others. We will not mourn these times. In fact, following the example of Vice-President of the Conseil d’État Jean-Marc Sauvé, when he addressed the topic of “influence through law” at the 22nd Conference of Ambassadors, the Author would agree that “by engaging in hybridisation, we have earned, and will continue to earn, room to manoeuvre and, as such, we may exercise

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*abandonnées, réflexion sur une révolution des mots*, 2015 REVUE DES CONTRATS 625.

45. Muriel Fabre-Magnan, *Critique de la notion de contenu du contrat*, 2015 REVUE DES CONTRATS 639, 639 (Author’s translation).

46. Fauvarque-Cosson, *supra* note 12, at 71.

47. Jean-Marc Sauvé, *Influence Through Law*, XXII Conference of Ambassadors, CONSEIL D’ÉTAT (Aug. 28, 2014), available at <http://www.conseil-etat.fr/Actualites/Discours-Interventions/Influence-through-law-XXII-Conference-of-Ambassadors> [<https://perma.cc/585U-GUYH>] (“The internationalisation of the law has, in fact, transformed the political and cultural issue of its export, which can no longer be seen as a one-way movement.”); see also Olivier Moréteau, *De Revolutionibus: The Place of the Civil Code in Louisiana and in the Legal Universe*, 5 J. CIV. L. STUD. 31, 58–60 (2012).

a positive influence.”<sup>48</sup> This is where Professor Levasseur’s approach of translation into civil law English terminology could tie together the community of civil lawyers on the occasion of the French reform of its general law of contracts.

## II. A PIVOTAL OPPORTUNITY TO REACH OUT THROUGH CONSISTENT TRANSLATIONS

Vice-President Sauvé correctly stated that the French “strategy of influence must . . . rely on promoting the comparative advantages of our law in a more pragmatic than ideological or systematic manner.”<sup>49</sup> This objective implies increasing the visibility of French law, which, according to him, is achieved in particular through “the translation—at least into English—of our most important legal texts—the main codes and major judgments . . . combined with the establishing of user-friendly digital spaces, rich in content.”<sup>50</sup>

Alain A. Levasseur did not wait for this 2014 address to set such a goal. He set an even higher objective when he and David Gruning translated the Avant-Projet *Catala*: “to preserve and assure a community of legal culture among the different translations, French-English, French-Spanish, French-Italian, etc.”<sup>51</sup> He then added: “We would thus offer a ‘common front’ whereby a jurist of Spanish tradition, for instance, could very easily identify himself with our English translation, because he would find the same legal concepts as the one he uses in his national law.”<sup>52</sup>

His work is not limited to the Avant-Projet *Catala* translation. Together with Randy Trahan, David Gruning, and the French research unit “Juriscope,” directed by Marie-Eugénie Laporte-Legeais, Professor Levasseur led a team of experts who translated more than 1,600 entries of the *Vocabulaire juridique Cornu de l’Association Henri Capitant des amis de la culture juridique française*.<sup>53</sup> Professor Levasseur’s team is on its

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48. Sauvé, *supra* note 47. He added that “we cannot expect openness from others while refusing to show openness ourselves” and that “[i]t is therefore essential, before establishing a new rule, in particular, when producing studies for our proposed bills, that we prepare a detailed assessment of the strengths and weaknesses of the existing law in light of a comparative law analysis, an exercise which remains unfortunately undervalued in our country . . . . Indeed, there is nothing more dangerous than obsessive insulation.” *Id.*

49. *Id.*

50. *Id.*

51. Alain Levasseur & David Gruning, *Version Louisianaise*, in *L’ART DE LA TRADUCTION, L’ACCUEIL INTERNATIONAL DE L’AVANT-PROJET DE RÉFORME DU DROIT DES OBLIGATIONS* 33, 34 (Pierre Catala ed., 2011). (Author’s translation).

52. *Id.* (Author’s translation).

53. *DICTIONARY OF THE CIVIL CODE*, *supra* note 43.

way to finalizing an alternative translation of the February 25, 2015 draft ordinance on the reform of French contract law, under the patronage of the Association Henri Capitant. The terminology that these scholars have established has already had a considerable impact on many other translations, such as the *Henri Capitant Law Review*,<sup>54</sup> which features more than a hundred articles, rulings, and studies using the civil-law oriented English terminology that Alain Levasseur envisioned.

This ambitious vision has caused a breakthrough in the awareness that the English language could be a friend and ally of the French Civil Law Tradition.<sup>55</sup> For example, translating “*les obligations solidaires*,” Professor Levasseur used “solidary obligations” instead of “joint and several obligations.” The criteria to make that linguistic choice were: (1) “solidary obligations” comes from a source of civil law; and (2) it sounds very close to French and to Spanish (*solidaridad*), which helps create a familiar ground for civil lawyers wherever they are. Another example is the translation of “*la compensation*.” According to common lawyers, that term translates into “set off.” Instead, the English civil law terminology prefers the word “compensation,” as the word comes from a source of civil law and sounds close to the same French and Spanish words.<sup>56</sup>

Of course, those are the nice and tidy examples, but it is not always as easy. For instance, take the translation of “*hypothèque*.” The Louisiana Civil Code uses “mortgage,” and so do English common lawyers. But the word “*hypothec*” exists in Jersey law and Scottish law,<sup>57</sup> and is known by enough civil lawyers to be valid.

These criteria are meant to set up guidelines, not dogma. Dogma is inconceivable when it comes to translation. Because languages are reflections of the human nature, they can never be subject to an automatic process. Languages will always find a way to escape dogma.

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54. For more information, see *Foreword*, HENRI CAPITANT L. REV., [www.henricapitantlawreview.fr](http://www.henricapitantlawreview.fr) (last visited Feb. 1, 2016).

55. For another convincing attempt of English to French translation, see Olivier Moréteau, *The Louisiana Civil Code Translation Project: An Introduction*, 5 J. CIV. L. STUD. 97 (2012), and Ctr. of Civil Law Studies, *Louisiana Civil Code: Code Civil de Louisiane*, 6 J. CIV. L. STUD. 655 (2013).

56. In Spanish, the word is *compensacion*.

57. For Jersey, see SOCIAL SECURITY HYPOTHECS (JERSEY) LAW 2014 (Rev. ed. 2014), available at [http://www.jerseylaw.je/law/Display.aspx?url=%2flaw%2flaws\\_inforce%2fconsolidated%2f26%2f26.850\\_SocialSecurityHypothecsLaw2014\\_RevisedEdition\\_1January2015.pdf](http://www.jerseylaw.je/law/Display.aspx?url=%2flaw%2flaws_inforce%2fconsolidated%2f26%2f26.850_SocialSecurityHypothecsLaw2014_RevisedEdition_1January2015.pdf) [<https://perma.cc/RLJ6-EUTN>]. For Scotland, see Bankruptcy and Diligence etc. (Scotland) Act 2007, (A.S.P. 3), pt. 11, § 208.

## CONCLUSION

Hopefully, the French reform of contracts will provide a unique opportunity to shape an English terminology that will enhance the sense of commonality among the vast community of civil lawyers in Canada, Louisiana, South America, Spain, Italy, Romania, and so many other places with a Latin heritage. In that case, this reform may very well appear as solid proof that the specificities of civil law have endured. From France to Argentina, to Canada, or to Chile, thanks to Alain Levasseur's legacy, the path to consistency will always run through Louisiana State University.

