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## Guided Tour in a Civil Law Library: Sources and Basic Legal Materials in French Civil and Commercial Law

G. M. Razi

*Member, District of Columbia Bar*

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## GUIDED TOUR IN A CIVIL LAW LIBRARY

SOURCES AND BASIC LEGAL MATERIALS IN FRENCH CIVIL  
AND COMMERCIAL LAW

G. M. Razi\*

LAWYERS everywhere rely upon their books with eagerness and confidence. The larger their libraries, the better equipped they feel to answer the questions of their clients. The *composition* of an average library differs somewhat in France and in the United States. In this country the law reports, in their familiar, substantial and elegant bindings, are displayed on the prominent shelves, while in Europe, the law reports—often merely paper bound—are relegated to some corner. The front place is reserved for the leather bindings and the gilt letters of the treatises bearing the names of outstanding authors in the various fields of the law.

It could be said that a law library reflects the legal system of a given country. The patient labor required of a European lawyer to understand the American system of law is, in a sense, but a long journey during which he finds, step by step, an answer to the wonders which surrounded him when first visiting an American law library. The same is certainly true for the American lawyer who desires to learn something about another system of law. Extensive research on the meaning and the content of the books seen on the shelves of a foreign law library will be required.

There is no doubt that the differences between French and American law libraries, in both composition and size, are due to the differences between the two systems of law. In the United States, both direct legislation and judicial decision have what is called *primary authority*.<sup>1</sup> It is very well known that despite the great accumulation of legislation, especially in recent years, the stress, in this country, has always been on judicial decision not only where there is *no* statute dealing with the subject but even where there is a statute which has been interpreted by the courts.

\* LL.B. 1937. University of Bucharest; Docteur en Droit 1948, University of Paris; member, District of Columbia Bar.—Ed.

<sup>1</sup> Cf. PRICE AND BITTNER, *EFFECTIVE LEGAL RESEARCH* 2 (1953).

Therefore in the United States the rule of law has to be found either in the statutes or in the body of judicial decisions. In France there is no judge-made law. The only source of law (with the explanations to be given below) is legislation, i.e., statutory law. On the other hand, France does not have a dual form of government and consequently instead of having two sets of books—of federal and state legislation and judicial decisions—the French lawyer has just one.<sup>2</sup>

Before giving an inventory of the French legal books,<sup>3</sup> the above introductory remarks should be supplemented by a word of caution directed especially to the American student who approaches the domain of foreign law for the first time. The difficulties or even the confusion in this field come not so much from what is new and completely unknown, but from what is common but different. Any European lawyer who entered an American law school remembers that what puzzled him was the fact that although, as to the substance, he recognized a similarity between the European and American courses, the labels put on these courses were different and consequently utterly confusing. Since the experience of the American student going into the field of foreign law cannot but be similar, the following remarks on terminology will be in order.

The word civil law (*droit civil*) has in France—and in all “civil-law” countries—a different meaning from that used in the United States. In the United States, the most generally accepted meaning of the term civil law designates the system of law of the countries with a Roman law tradition which have adopted the Code Napoleon or in a very general sense the “code-system.” In France and in the “civil-law” countries, civil law<sup>4</sup> does not designate the whole law of the country but just a part of it, to

<sup>2</sup> To “visualize” what the absence of the dual form of government could mean in terms of space in the library of a New York lawyer, for instance, one would have to imagine the removal from the shelves of the 54 volumes of the *United States Code Annotated*, the 70 volumes of the United States Statutes at Large, the United States Constitution and hundreds of volumes containing federal court decisions, or the 76 volumes of McKinney’s, the volumes containing the laws of the State of New York, official edition, and the many volumes containing the judicial decisions of the New York courts.

<sup>3</sup> The term “legal materials” does not exist in France, as the French do not have any discipline similar to what we call in American “legal research,” the relative simplicity of “finding the law” making such a science unnecessary.

<sup>4</sup> The expression *Civil Law* was borrowed in France from Roman law. Roman law made a distinction between *Jus Civile*, the law of the Roman citizens, and *Jus Gentium*, the law, common to all the peoples of the Roman Empire and applicable to those who

be sure the most important part of the private law. While public law comprises the rules governing the organization of the state and those governing the relations between the state or its agents with the people, private law contains the laws pertaining to the relations between private persons. It acknowledges and defines the juridical prerogatives which the private citizens can exercise in their mutual relations. Private law includes, for instance, family relations—as between husband and wife, parents and children—and economic relations—the exchanges of goods and services between individuals. The essential rules of private law, say Colin and Capitant,<sup>5</sup> constitute the civil law, *le Droit Civil*. From the main trunk of civil law have been detached certain branches as: commercial law, which governs the relations of private persons engaged in commercial activities, labor law (*Droit du Travail*), which is concerned with the relations between the employers and the employees or workers, maritime law and air law. This large body of private law includes also civil procedure, which provides the rules to try disputes between private persons according to private law.

The comprehensive scope of the term civil law in France explains why in France and in other “civil-law countries” the American lawyer will not find—either in the law libraries, or in the curriculum<sup>6</sup> of the law schools—the titles of some of the most familiar subjects of American law: Domestic Relations, Personal Property, Real Property, Future Interests, Torts, Contracts, Agency, Mortgages, Bailments, Security, Creditor’s Rights, Sales, Vendor and Purchaser, Landlord and Tenant, Partnership. All these subjects are to be found in the Civil Code and consequently in the civil law treatises or, in the curriculum of the law schools, in the civil law courses. Other subjects, as for instance

were not *cives Romani*. During the Middle Ages, *Jus Civile* designated the Roman law, represented by the compilations of the Emperors—the *Corpus Juris Civilis*—while *Jus Canonium* represented the body of laws of the Catholic Church. But, little by little, during the 15th and 16th centuries, the expression Civil Law (*Jus Civile* or *Droit Civil*) was reserved to the rules pertaining to the relations of private persons among themselves. Thus, in the 17th century, the distinction was definitely established between the Civil law, the rules of Private law, and the Public law, or “the fundamental laws of the Kingdom of France,” as in the great jurist Domat’s important work, *LES LOIS CIVILES DANS LEUR ORDRE NATUREL* (The Civil Laws in Their Natural Order) (1722).

<sup>5</sup> COLIN AND CAPITANT, *TRAITÉ DE DROIT CIVIL* 20 (1953).

<sup>6</sup> For the new curriculum of the French law schools see, Tunc, “New Developments in Legal Education in France,” 4 *AM. J. COMP. L.* 419 (1955).

Copyright or Patent Law, which are not dealt with by the Civil Code are also attached to *Droit Civil* or to Commercial Law (Patent Law for example) since they also pertain to laws governing the relations between private persons. Negotiable Instruments, Corporations, Business Associations, Bankruptcy are included, of course, in Commercial Law. The American lawyer, aware of the unique historical circumstances which developed the rules of Equity, may not be surprised at the absence of a separate classification of the law of Equity on the continent. But he will probably be astonished not to find a law of Evidence. This is accounted for by the different conceptions of the way to conduct a trial in civil law countries from those prevailing in the common law countries.

As far as the titles in the field of Public Law are concerned the French terms *Droit Constitutionnel*, *Droit Administratif*, *Droit Penal*, *Droit Fiscal* will be certainly familiar to the American lawyer although the approach to Constitutional or Administrative Law in France is quite different from that prevailing in American casebooks or textbooks. On the other hand, the *Conseil d'Etat*—being free of the restrictions imposed on the French judicial courts—had a considerable influence in the creation and development of the French Administrative Law, the latter appearing as a body of judge-made law, and as such, closer to the techniques of the common law than to the other fields of French law.

With the above terminological indications we will proceed to an enumeration of the French basic legal materials following the classification adopted by authors of legal research treatises with which the American students and lawyers are more familiar: 1. Legislation 2. Law Reports 3. Digests and Legal Encyclopaedias 4. Treatises 5. Legal Periodicals.

## I. LEGISLATION

### A. Codes

The Civil Code, promulgated in 1804, together with the Code of Civil Procedure (1807), the Commercial Code (1808), the Criminal Code and the Code of Criminal Procedure (promulgated simultaneously in 1811) constitute the foundation and principal sources of French law.

The French Napoleonic codes are not statutory compilations, as some of the American codes,<sup>7</sup> but constitute original legislation, each code representing important segments of the law of the country.

It must be remembered that while in non-statutory law the rule of law is laid down "in the context of a specific case and is only secondarily applicable to future situations (depending on the strictness with which *stare decisis* is followed)," in statutory law "the rule is laid down *ab initio* for an indefinite number of future situations." Codification is "a form of statutory law in which a broad range of interconnected subjects is treated systematically and simultaneously in one document, as against their more or less fragmentized treatment in a series of isolated or sporadically enacted documents."<sup>8</sup>

The Civil Code<sup>9</sup>—sometimes called the Code Napoleon—consists of a Preliminary Title and three Books. The Preliminary Title (articles 1 to 6)<sup>10</sup> contains general legal principles. It deals with the promulgation, nonretroactivity, application and effects of statutes, and with the interpretation of the statutes by the courts. Book I (articles 7 to 515) is entitled the Law of Persons. The first few articles (7 to 33) relate to the enjoyment and loss of civil rights. The remainder of Book I deals with documents relating to the civil status (certificates of birth, marriage and death) domicile, absentees, marriage, divorce, paternity and legitimacy, adoption, paternal authority, guardianship, emancipation, majority, incompetence, and administration of estates. Book II (articles 516 to 710) is entitled Property and the Various Modifications of Ownership and deals with various rights in real and personal property: ownership, enjoyment (usufruct), occupation, easements (servitudes) and duties connected with land. Book III (articles 711 to 2811) covers succession, gifts, wills, obligations

<sup>7</sup> Cf. PRICE AND BITTNER, EFFECTIVE LEGAL RESEARCH 20 and 22 (1953).

<sup>8</sup> Cf. Akzin, "Codification in a New State: A Case Study of Israel," 5 AM. J. COMP. L. 49 at 50-51 (1956).

<sup>9</sup> The casebooks of Professor R. Schlesinger [COMPARATIVE LAW 233 (1950)] and of Professor Arthur von Mehren [THE CIVIL LAW SYSTEM 855 (1957)] give a detailed table of contents of the Civil Code. Professor von Mehren also gives a translation of the provisions of the Code relating to Contractual Obligations (arts. 1101-1369, 1582-1593, etc.) pp. 860-873. For a recent appraisal of the achievements of the Code Napoleon, see the articles in 6 REVUE INTERNATIONALE DE DROIT COMPARÉ, No. 4 (1954), and in SCHWARTZ, THE CODE NAPOLEON AND THE COMMON LAW WORLD (1956).

<sup>10</sup> French *articles* correspond to what we call "sections" in the numeration of legislative acts in the United States.

arising in contract and torts, the different types of marriage settlements (*régimes matrimoniaux*), sales, liens, mortgages and prescription. Since its publication, the Civil Code has had two official editions, in 1807 and 1816. All the subsequent editions of the Code have been private.

The Code of Civil Procedure is divided into two parts. The first part (articles 1 to 811) deals with regular procedure in the various courts (justices of the peace, trial courts and appellate courts) including attachment, execution of judgments and costs. The first book of the Second Part (articles 812 to 906) deals with particular types of action such as *ex parte* proceedings, partition of property, judicial separation, etc. The second book (articles 907 to 1042) deals with probate procedure. The third book is devoted to arbitration procedure. The last part of the Code (articles 1029 to 1042) contains some general principles governing procedure. There were three official editions of the Code of Civil Procedure, in 1806, 1816 and 1842.

The Commercial Code is divided into four books and contains 648 articles, approximately one-fourth of the number of articles contained by the Civil Code. The first book (articles 1 to 189) deals with the machinery of business generally and contains the law governing the status of merchants, bookkeeping, business organization, division of business property in case of divorce, commodity exchange and brokers, pledges and commission agents, purchase and sale, bills and notes and prescription. The second book (articles 190 to 436) deals with maritime commerce. The third book (articles 437 to 614) contains the rules of regulating bankruptcy. The fourth book (articles 615 to 648) deals with the organization and jurisdiction of the commercial courts (*tribunaux de commerce*). The Commercial Code, written in a hurry, was somewhat outmoded at the very moment of its promulgation. Largely a re-enactment of the ordinances of 1673 and 1681 concerning commerce on land and maritime law respectively,<sup>11</sup> the Commercial Code was issued (January 1, 1808)

<sup>11</sup> The main source of French law before the 1789 Revolution was custom. However, with the second part of the 17th century, the Ordinances and Edicts promulgated by the King began to play an important part as legislative sources of law. As celebrated as the above-mentioned Ordinances of 1673 and 1681 were *L'Ordonnance Civile* of 1671 which was a Code of Civil Procedure, and the Criminal Ordinance of 1690 which was a Code of Criminal Procedure. Prepared by Colbert they were promulgated by Louis XIV. Louis XV promulgated the Ordinance of 1731 on donations and that of 1735 on Wills

on the eve of the most important events which have shaped the economic configuration of the 19th century: development of the railroads, of steam-power navigation, of the big corporations (*sociétés anonymes*), etc., and, perforce, was silent on all these institutions. This is the reason why so little has remained from the initial provisions of the Code. Whole portions of it have been revised. In 1838, Book III, on bankruptcy, was completely revised. A statute of July 24, 1867—many times amended since—modified the corporation law. In 1935, the title (*Titre*) devoted to Negotiable Instruments was completely replaced by a new text. There were two official editions of the Commercial Code, in 1807 and 1841.<sup>12</sup>

Besides the five Napoleonic Codes, the publishing company Dalloz has been publishing editions of the *Code du Travail* (Labor Code), *Code Administratif* (Administrative Code), *Code General des Impôts* (Fiscal Code), *Code Forestier et Rural* (Rural and Forest Code), *Code de la sécurité sociale, de la santé publique et de l'aide sociale* (Public Health and Social Security) every one or two years. Most of these codes are mere compilations of statutes grouped in separate volumes for the convenience of research.

### B. Statutes and Statutory Materials

The original provisions of the Codes have been the object of numerous modifications through subsequent legislative action. All subsequent editions of the Codes have incorporated all

(prepared by Chancellor d'Aguesseau) from which many provisions have come later in the Civil Code. Cf. COLIN AND CAPITANT, *TRAITÉ DE DROIT CIVIL* 84-85 (1953), and Deak and Rheinstein, "Development of French and German Law," 24 *Geo. L. J.* 551 (1936). In French legal terminology, the law before the Revolution of 1789 is called *Ancien* (old) *Droit*, in opposition to the new law brought by the Civil Code and to the *Droit Intermédiaire* of the Revolutionary period.

<sup>12</sup> It is known [see Houin, "Reform of the French Civil Code and the Code of Commerce," 4 *Am. J. Comp. L.* 485 (1955)] that in 1945 the French Government appointed a Commission of 12 members to undertake the reform of the *Code Civil*. The account of the works of this Commission is to be found in the 9 volumes (1947-1957) of *TRAVAUX DE LA COMMISSION DE RÉFORME DU CODE CIVIL* (Librairie du Recueil Sirey), and in the *AVANT-PROJET DU CODE CIVIL* presented to the Attorney General (M. le Garde des Sceaux), 1<sup>re</sup> PARTIE, LIVRE PRÉLIMINAIRE, LIVRE PREMIER, DES PERSONNES PHYSIQUES ET DE LA FAMILLE (1955).

The five volumes (1950-1955) of *TRAVAUX DE LA COMMISSION DE RÉFORME DU CODE DE COMMERCE ET DU DROIT DES SOCIÉTÉS* give an account of the works of the Commission, appointed in 1947, for the reform of the Commercial Code.



changes to the original provisions and, generally, it can be said that as far as legislation is concerned, a French lawyer can limit his research to the simple reading of the pertinent articles in a recent edition of new legislation which is published by one of the official publications or law reviews to be mentioned below. In daily practice, lawyers mainly use the most popular of pocket editions—*Petits Codes Dalloz*—where they find not only the text of the codes and statutes but also references to the decisions of the courts interpreting the articles of such codes or statutes. *Codes Annotés* (annotated codes), published by Sirey and Dalloz, are often consulted by the practitioners. They give under each article extensive references to the judicial decisions interpreting and applying such article and to the pertinent chapters of standard treatises and text books. *Code Civil Annoté* by Fuzier Herman (1935-1949) comprises seven volumes.

But, of course, before being incorporated in the yearly editions of the codes, new legislation is published both in official and private publications.

1. *Official Publications.* The main official publication in France is *Journal Officiel de la République Française*. *Journal Officiel* issues several series: 1. *Lois et Décrets*; 2. *Débats Parlementaires (Assemblée Nationale)*; 3. *Débats Parlementaires (Conseil de la République)*; 4. *Documents Parlementaires*. In *Lois et Décrets* are published statutes and decrees which constitute new law. *Débats Parlementaires* publish the parliamentary debates of the National Assembly and of the Senate (*Conseil de la République*) together with *Documents Parlementaires* (containing answers of ministers to questions, reports of parliamentary committees, etc.). *Débats Parlementaires* serve as a source of the legislative history of a statute or of the interpretation given to a statute by some branch of the Administration. In addition to *Journal Officiel*, there are many other official publications<sup>13</sup> which are issued by various ministries or public offices containing instructions sent to officers, reports by the planning commissions, etc. Although these materials do not constitute law but simply reflect what is called the administrative practice, they govern the conduct of officers in all branches of the public services and are therefore of interest for the public in general. That is

<sup>13</sup> For a complete list see FRENCH BIBLIOGRAPHICAL DIGEST (Law) 35-39 (1952) published by the Cultural Division of the French Embassy, New York.

why an effort is currently being made to consolidate and codify all these materials with the purpose of finally establishing, for each major branch of the administration, three documents only: a code of statutes (acts of Parliament) governing their activities, a code of subordinate legislation (*réglements, décrets*) applying in their field of action, and, finally, an *Instruction Générale* covering all instructions given within a particular government department on how to apply established legal principles to particular situations.

2. *Private Publications.* *Recueil Sirey (série Législation)*, 1950ss, monthly, *Bulletin Législatif Dalloz (Lois Annotés)*, 1918ss, fortnightly, *Recueil Dalloz (Legislation)*, 1845ss, weekly, *Juris-classeur (Codes et Lois)*, etc. reproduce the text of the statutes, decrees, etc. as published in *Journal Officiel*, but in a more convenient size and with better indexes.

## II. JUDICIAL DECISIONS<sup>14</sup>

"The impression one may easily get upon even a serious investigation of Civil law practice is precisely that there is a tendency more and more to adopt the attitude and technique of the Common Law in the matter of precedents. One finds printed reports of judicial decisions, codes annotated by cases, treatises citing them, lawyers referring to them in arguments and even judgments mentioning them.

"But from my own experience in the actual application of the Civil Law . . . I have come to realize that such indicia may be misleading."<sup>15</sup>

### *Role Played by Judicial Decisions in France*

The place occupied by judicial decisions in French and "civil" law, generally, has often been discussed in Anglo-American literature.<sup>16</sup> Using a somewhat arbitrary classification, we could

<sup>14</sup> For an evaluation of the role played by the collections of judicial decisions, see Meynial, "Les Recueils d'Arrêts et les Arrêtistes," 1 *LE CODE CIVIL, 1804-1904, LIVRE DU CENTENAIRE*, 1904, p. 175. For the English translation see VON MEHREN, *THE CIVIL LAW SYSTEM* 61 (1957).

<sup>15</sup> The Hon. Robert L. Henry, Judge of Mixed Tribunals, Alexandria, in "Jurisprudence Constante and Stare Decisis Contrasted," 15 *A.B.A.J.* 11 (1929).

<sup>16</sup> Deak, "The Place of the 'Case' in The Common Law and The Civil Law," 8 *TULANE L. REV.* 337 (1934); Ireland, "The Use of Decisions by United States Students of Civil Law," 8 *TULANE L. REV.* 358 (1934); Lobingier, "Precedent in Past and Present

separate the writings of common law lawyers on the role played by judicial decisions in civil law countries into two groups. One group of writers point to the role played by judicial decisions in the civil law system in order to stress the differences existing between the common law countries and the civil law countries. The other group insists that the judicial function is similar in both systems and accuse the former of "sweeping generalizations."<sup>17</sup> The apparent contradiction between these two, sometimes extreme, positions is understandable. It is not too difficult a task to explain a statutory provision from a foreign code. A translation of the text, accompanied by explanations of terminology, may suffice. It is always more difficult to present the "living law," to explain what has happened to a certain provision of the law throughout a certain course of time during which, having as a background a changeable set of political, economic and social conditions, it was handled by lawyers and judges, and has been tested on human beings in actual situations, i.e., it has met with the continuous adventure of life. This is, we believe, the "case" of article 5 of the *Code Napoléon*. It states: "*Il est interdit aux juges de prononcer par voie de disposition générale et réglementaire sur les causes qui leur sont soumises.*" In translation: "In the causes submitted to them, the judges are forbidden to decide in terms of general or regulatory dispositions." The wording of this article cannot be understood without having in mind the objective of the authors of the Code. They wanted to prevent the courts from rendering *des arrêts de règlements*, "regulatory decisions," as used by *les Parlements* from the pre-revolutionary period. Indeed, when the Provincial *Parlements* had to deal with some difficult case involving the interpretation of dubious provision of the provincial custom (*coutume*), *le Parle-*

Legal Systems," 44 MICH. L. REV. 955 (1946); Pound, "Hierarchy of Sources and Forms in Different Systems of Law," 7 TULANE L. REV. 475 (1933); Cohn, "Precedents in Continental Law," 5 CAMB. L. J. 366 (1935); Lipstein, "Doctrine of Precedent in Continental Law," 28 J. COMP. LEG. & INTERN. LAW, 3d series, parts III and IV, 34-44 (1946).

<sup>17</sup> "The opinion that the laws of civil and common law countries differ in most respects, is quite common. It has been the custom among authors to emphasize the difference between the two legal systems. For example, it has been said that common law countries rely primarily on judge-made law, whereas civil countries have statute law as the basis of their legal systems. Clearly, nothing is farther removed from the truth than this sweeping generalization." Shain, "Presumptions Under the Common and the Civil Law," 18 SO. CAL. L. REV. 91 (1944). We wonder whether this statement does not fall into the error it purports to remedy. The opinions the author reports seem rather qualified as compared to his "sweeping generalizations."

*ment* could direct that its decision in the specific case would, in the future, have the authority of a general rule for the whole province. Article 5, say Colin and Capitant,<sup>18</sup> has forbidden this practice because: (a) it was contrary to the principle of separation of powers formulated by Montesquieu as one of the surest guarantees of the preservation of the individual liberties of the citizens. The task of the legislature is to legislate, that is, to formulate general rules. The judge must solve the disputes which arise in the application of the law but he must not interfere with the province of the legislature. (b) Had the local judges been permitted to use a "regulatory" power, the diversity of the customs would have been re-established, while the desire and purpose of the Civil Code had been to unify civil legislation.

For the above-mentioned reasons, article 5 was given the strictest interpretation, to wit, that a judge's decision "has no value but for the case in which it was rendered and cannot, under any circumstances, be transformed into a general rule having any authority or weight either in another case or for another judge, not even for the same judge who rendered the decision."<sup>19</sup> Or in the words of Judge Henry, cited above, "it is not considered to be the business of judges to make law; their task is to apply it to the specific cases brought before them. It follows that they should not formulate rules of law in their own words. Neither should they be influenced in their decisions by what other judges have held upon similar facts, for the others may have been wrong and it is not desirable that errors should be repeated." But the provisions of article 5—positive as they are—do not give the whole picture of the role played by the judiciary in France, which according to article 5 would have been, of course, nil. With article 5 must be read article 4 which provides: "A judge who refuses to give judgment in a case on the ground that the statute (*la loi*) is silent, obscure or incomplete can be sued for denial of justice." And both articles must be considered on the basis of elementary understanding of the judicial function and in the perspective of the changing times of the past 150 years. When article 4 requires the judge to give judgment even when the statutes are silent, obscure or incomplete, it implicitly recognizes that the judge can not only apply the law but he

<sup>18</sup> COLIN AND CAPITANT, *TRAITÉ DE DROIT CIVIL* 167, No. 264 (1953).

<sup>19</sup> *Ibid.*

can also "create" law. "Since code and other legislative provisions," observes Professor Sereni,<sup>20</sup> "usually consist of broad statements expressed in general terms and do not go into details to the same extent as common-law statutes it is for the courts to proceed to the implementation, in connection with the particular cases submitted to them, of the general principles laid down by the legislature; as a result the administration of the law by the courts in civil law countries presupposes the exercise of judicial discretion to a greater extent than is customary in common-law countries." In these circumstances, we would say that it is no wonder that the role played by judicial decisions in France has been differently evaluated by some common-law writers. Some of them, impressed by the supremacy of the written law (contrasted with the celebrated exclamation of a Chief Justice of the United States Supreme Court: "The Constitution is what the Court says it is") and by the fact that "application of law does not give rise itself to new rules of law,"<sup>21</sup> have stressed the differences existing between the civil and common law systems, while others, noticing the discretion exercised by the courts, have underlined the similarities between the two systems in this respect.

When the judge applies a statute he does not perform a mechanical function but a creative one.<sup>22</sup> And while in France the specific applications of the law in the form of judicial decisions do not constitute law in themselves as they do in the common law system, the interpretations of the courts have, as a matter of practical effect,<sup>23</sup> influenced the law of the Codes to a great extent. Although judicial decisions have not been considered as a source of law, they have nevertheless supplemented, modified and sometimes contradicted the "apparent or ancient"<sup>24</sup> meaning of the provisions of the Codes. The courts, as well as subsequent legislation, have helped the continuous adaptation of the provisions of the Codes to the necessities of the changing times and have given to French law its present character.

<sup>20</sup> "The Code and Case Law," in SCHWARTZ, *THE CODE NAPOLEON AND THE COMMON-LAW WORLD* 55 at 61 (1956).

<sup>21</sup> Henry, "Jurisprudence Constante and Stare Decisis Contrasted," 15 *A.B.A.J.* 11 (1929).

<sup>22</sup> Von Mehren, "The Judicial Process: A Comparative Analysis," 5 *AM. J. COMP. L.* 197 (1956).

<sup>23</sup> COLIN AND CAPITANT, *TRAITÉ DE DROIT CIVIL* 105 (1953).

<sup>24</sup> *Ibid.*

In the field of civil law, a few important examples of the influence of the courts are given below:

(a) *In the Law of Persons*: According to article 340 of the Civil Code, a child born out of wed-lock had no legal means to seek to establish paternity. The courts, on the basis of article 1382, softened the impact of this too rigorous provision by allowing the mother to sue her seducer for damages, thus enabling her, at least partially, to assure the upbringing of the child. The policy adopted by the courts has, finally, led to the reform brought about in this matter by the statute of November 16, 1912.

The statute of July 27, 1884 reintroduced the divorce in France but only for specific grounds. By a very liberal interpretation given to the ground of *injure grave* the courts have facilitated divorce beyond the intention of the legislature in order to conform to the pressure exercised by the change of mores.

(b) *In the Law of Real Property*, the French courts made an important contribution to the evolution of the law of the Code Napoleon. Despite the provisions of article 544 they have stated that ownership is not an absolute and sovereign right which cannot be subjected to any restrictions in absence of specific statutory provisions. In this field, the courts have formulated and applied the doctrine of "abuse of right" (*abus de droit*) according to which, for example, an owner who in the use of his property intentionally harms his neighbor or who does not make a reasonable use of his property rights is liable for damages and may, in certain instances, be compelled to demolish structures erected on his own property.

(c) *In the Law of Contracts*: The authors of the Code had unmistakably shown their intention to protect to the utmost the autonomy of the individual will (*autonomie de la volonté*). Consequently, the judges were not supposed to interfere in any way with the expressed intent of the parties in a contract. Nevertheless, the courts have developed the means of controlling the validity of contracts whenever the individual intent at the formation of the contract violates *l'ordre public* (public policy) or when a contract has an illegal or false *cause*.

Article 1119 of the Civil Code specifically prohibited promises in favor of third-party beneficiaries (*stipulation pour autrui*), since the general principle enunciated by the Code is that contracts are binding only for the parties to the con-

tract and have no effect whatsoever with regard to third parties. In cases involving third party beneficiaries in insurance policies, the courts, however, have so liberally interpreted the few exceptions to the general principle mentioned by the Code as to reverse completely the position initially taken by the Code. Today, there is no situation where the *stipulation pour autrui* is not admitted.

(d) *In the Law of Torts*: The work of the French tribunals is especially known in the field of civil responsibility for wrongful acts (*responsabilité civile*) which in Anglo-American law belongs to the province of torts. As interpreted at the beginning of the 19th century, articles 1382 to 1386 provided that one's responsibility existed only when the victim could prove an intentional fault (*délit civil*) or imprudence and negligence (*quasi-délit*). In many cases, it was not easy to produce such proof. The coming of the industrial age has increased the occurrence of all kinds of accidents with grave consequences. Through an audacious interpretation of article 1384, the courts relieved the victim of the requirement of producing any kind of proof concerning fault in all cases where a material thing—automobile, engine, machine, etc.—had played a part in the occurrence of the accident causing injury or damage.

As already mentioned above on the subject of damages granted to the mother of an illegitimate child, the French courts have also brought the provisions of article 1382, enunciating the basic principle of responsibility for fault into the interpretation of matters extraneous to the field of civil responsibility proper in order to give a remedy where none would exist.

(e) *In the Law of Procedure*: Although the French law does not possess a body of Equity, a procedural device, *les astreintes*, which in a limited way renders services comparable to the Anglo-American injunction,<sup>25</sup> was introduced by the French courts in their endeavor to find the just solution in every case at hand, a task common to judges everywhere.

That is why, in order to make a general survey of French law as it is actually applied, the practitioner, the scholar or the foreign student must supplement his study of the Codes and subsequent legislation with a study of the judicial decisions. For the

<sup>25</sup> See Brodeur, "The Injunction in French Jurisprudence," 14 TULANE L. REV. 211 (1940).

American lawyer, the French judicial decisions bear a misleading name, *Jurisprudence*. In French, *jurisprudence* designates either all the judicial decisions (and it is then mentioned as *la jurisprudence*) or the judicial decisions rendered by a certain court on a certain subject, as in the expression, the *jurisprudence* of the *Cour de Cassation* on the subject of the civil responsibility of the automobile driver.

### *Judicial Reports*

The main French Judicial Reports are listed below.

*A. The Official Reports.* The French highest court—*la Cour de Cassation*—publishes a *Bulletin des arrêts de la Cour de Cassation* since *an VII*. Since 1947, when it was reorganized, the *Bulletin* has been publishing all civil decisions (of the *Chambre Civile*). The criminal decisions of the *Chambre Criminelle* are published in a separate *Bulletin*.

*B. The Private Reports.* The reports which are most widely circulated in France are published by private firms and purport to cover decisions rendered by all courts of France. The opinions, which are generally very short compared with English or American decisions, are accompanied by annotations, comments by a well-known jurist, an editorial note containing references to similar or identical cases, and sometimes by the conclusions of *Ministère Public* in the case. The principal current reports of judicial decisions are *Sirey*,<sup>26</sup> *Dalloz*,<sup>27</sup> *Gazette Du Palais*,<sup>28</sup> and *Semaine Juridique*.<sup>29</sup>

<sup>26</sup> Founded by J. B. Sirey, *Recueil Sirey* comprises the judicial decisions since 1791 in monthly volumes divided into five parts: (1) decisions of la Cour de Cassation; (2) decisions of French Cours d'Appel and Tribunaux; (3) decisions of le Conseil d'Etat and administrative jurisdictions; (4) foreign decisions; (5) tables. Besides, it comprises 4 volumes of general tables up to 1850 and, since 1850, a table every ten years. It is cited: S. 1900.3.63. An abridged edition in 20 volumes contains the Sirey from 1791 to 1900.

<sup>27</sup> Started in *an XII* by Denevers under the name of *Journal des Audiences*, it has been taken over by Dalloz who, beginning in 1832, gave it his name. Reorganized in 1845, under the name JURISPRUDENCE GENERALE DALLOZ it comprised: (1) RÉPERTOIRE ALPHABETIQUE DE LÉCISATION, DOCTRINE ET JURISPRUDENCE, in 44 volumes, containing all subjects of Civil Law and several thousand of judicial decisions. It is cited: JUR. GEN. V (verbo) . . . Nr. . . . A supplement in 19 volumes was published from 1887 to 1897. (2) RECUEIL PERIODIQUE, in monthly fascicles constituting annual volumes, composed of five parts: (a) decisions of la Cour de Cassation, (b) decisions of French and foreign Cours d'Appel and Tribunaux, (c) decisions of le Conseil d'Etat and administrative jurisdictions, (d) new statutes and decrees, (e) tables. RECUEIL PERIODIQUE was cited



*Digests, Legal Encyclopaedias and Legal Dictionaries*

In a country where the rule of law is always supposed to be found in statutes—codified or not codified—there is no real need of digests of the American type. The publications which remind one most of American digests are the *Tables* (indexes), quinquennial or decennial, which are published with the judicial reports mentioned above. The most popular of these indexes are the *Tables quinquennales de la Gazette du Palais* which give a summary of decisions published in *Gazette du Palais* and other judicial reports. *Jurisprudence Française*, in four volumes, by A. Bruzin and J. Nectoux contains *Tables* from 1807 to 1952, all leading cases (*arrêts de principe*) and all the important cases published by the judicial reports.

*Jurisclasseur Permanent* could be considered the equivalent of one of the American encyclopaedias of the law. It comprises 39 volumes *Droit Civil*, 34 volumes *Droit Commercial*, 12 volumes *Droit Penal*, 3 volumes *Droit Administratif*, etc.

*Encyclopédie Juridique Dalloz*, published under the direction of Georges Ripert, is divided in six *Répertoires*: *Répertoire de Droit Civil* (1951-1955), six volumes with a 1957 Supplement, *Répertoire de Droit Criminel et Procédure Penale*, two volumes, *Répertoire de Droit Commercial et des Sociétés*, three volumes, *Répertoire de Droit Public et Administratif*, two volumes, *Répertoire de Droit Social et du Travail*, two volumes (the last two *Répertoires* to be issued).

*Répertoire Alphabétique* of Fuzier Herman published by Sirey can also be considered as a legal encyclopaedia.

As compared to those existing in common law countries, French legal dictionaries are much more concise. In 1957,

D.P. 1925.1.55, by year, part and page. In 1945, RECUEIL PERIODIQUE was merged with two other reports (Recueil Critique and Recueil Analytique) in the present RECUEIL DALLOZ, in three parts: Chroniques, Jurisprudence, Législation, which is cited D.1947. Chron.52 or D.1947.25 (legislation or jurisprudence).

<sup>28</sup> *Gazette du Palais* issues (1) a JOURNAL, published two or three times a week in the form of a newspaper, containing the most recent judicial decisions, articles, comments and news of a legal character or of special interest to the legal profession; (2) a monthly RECUEIL forming an annual volume and reproducing the judicial decisions and chroniques (comments) published during the year. It is cited: GAZ. PAL. 1946, 1er semestre, p. 272.

<sup>29</sup> Published since 1927, it became the weekly organ of Jurisclasseurs, under the name of JURISCLASSEUR PERIODIQUE. It is cited: J.C.P., 1947, nr. 2487.

*Dalloz* published a new edition of its *Petit Dictionnaire de Droit*.

### *Treatises*

In French legal terminology, *la doctrine* is a term parallel to that of *jurisprudence*. *La jurisprudence* designates the judicial decisions. *La doctrine*<sup>30</sup> designates all legal writings, books, treatises, articles, comments or notes of jurists, professors, authors. It does not constitute a source of law. It is the "legal or juristic science" and as such corresponds to a certain extent to what is generally understood today in the United States by the term of "jurisprudence." *La doctrine*, say Colin and Capitant, "helps the Courts and the practitioners to interpret the statutes and to adapt them to the evolution of the techniques and the mores and helps the legislator for the enactment of new laws."<sup>31</sup>

The approach of the 19th century authors compared to that of the more modern writers illustrates the evolution undergone by French law. The 19th century commentators of the Napoleonic Codes are known as representing the exegetic school.<sup>32</sup> Their treatises proceed with an exegesis of the Codes, usually taking

<sup>30</sup> Cf. POUND, READINGS ON THE HISTORY AND SYSTEM OF THE COMMON LAW, 3d ed., 295 (1927).

<sup>31</sup> COLIN AND CAPITANT, TRAITÉ DE DROIT CIVIL, No. 141, p. 85, and No. 178, p. 109 (1953). In *l'Ancien Droit*, *la doctrine* constituted a real source of law. Before the time of the official "writing" of the Provincial Customs, the judges and lawyers used to seek the legal rules in the works of certain jurists. During the 13th and 14th centuries, a number of unofficial books—as LES COUTUMES DE BEAUVOISIS by Beaumanoir, LES ETABLISSEMENTS DE SAINT LOUIS by an anonymous author, LA TRÈS ANCIENNE COUTUME DE BRETAGNE, LE GRAND COUTUMIER DE NORMANDIE, LA SOMME RURALE by Boutellier—had acquired a quasi-official authority. After the "writing" of the Provincial Customs, ordered by the Royal Ordinance of Montil des Tours (1453) *la doctrine* lost its authority as a source of law. The great French jurists of the 16th, 17th and 18th centuries played, however, an important role in the preparatory work for the unification of French law. They underlined the shortcomings caused both by the diversities and the complexities of the customs. They urged greater simplicity and endeavored to bring to the fore the great general principles common to the various customs, preparing thus the rational unity of French law. Cf. Meynial, Remarques: "Sur le Rôle Joué par la Doctrine et la Jurisprudence dans l'Oeuvre d'Unification du Droit en France . . .," 27 REVUE GÉNÉRALE DU DROIT, DE LA LÉGISLATION ET DE LA JURISPRUDENCE 326 (1903).

Among the most celebrated jurists of *l'Ancien Droit* are Charles Dumoulin (1500-1566), Bertrand d'Argentré (1518-1590), Antoine Loysel (1536-1617), Cujas, Domat (1626-1696), Bourjon—who in his LE DROIT COMMUN DE LA FRANCE (1747) stressed the unity of French law—and Pothier, the famous author and president of the *Presidial d'Orléans* (1699-1772).

<sup>32</sup> For a description of the evolution of the French schools of interpretation see Charmont and Chausse, "Les Interprètes du Code Civil," 1 LE CODE CIVIL, 1804-1904, LIVRE DU CENTENAIRE 133 (excerpts in English translation in VON MEHREN, THE CIVIL LAW SYSTEM 59 (1957)).

article after article. Some of them name their treatises: *Cours de "Code" Civil* instead of *Cours* or *Traité de Droit Civil*, as for instance Demolombe, in order to point out that there was no other law (*droit*) but that of the Code.

The civil law exegetes are Toullier (*Traité de Droit Civil*, 16 volumes, 1811), Troplong (27 volumes, 1833), the above-mentioned Demolombe (31 volumes) continued by Guillouard (19 volumes, 1845), the Belgian Lambert (*Principes de Droit Civil*). The outstanding treatise of the first half of the 19th century is *Cours de Droit Civil Français* by Aubry and Rau, professors at Strassbourg, published from 1838 to 1847. Aubry and Rau presented their treatise as a French adaptation of the commentary of the Code Napoleon by the German professor at Heidelberg, Zaccharie. But Aubry and Rau have very much transformed and amplified Zaccharie's book. Freeing themselves of the sheer exegetic method and of the meticulous commentary of every article, Aubry and Rau sought to develop the general principles contained in the provisions of the Civil Code and succeeded in building up a very solid construction of the French civil law. They had a noted influence upon the interpretation given by the Cour de Cassation and even today their treatise is very much consulted. In the 20th century, Etienne Bartin has edited the fifth edition of the *Traité* and, at the present, a sixth edition is being issued by Professor Paul Esmein (12 volumes).

Beginning with the end of the 19th century—and largely under the influence of the remarkable *Méthodes d'interprétation et sources en Droit Privé positif* (1899) of Francois Génys<sup>33</sup>—the authors have no longer limited themselves to a mere logical commentary of the Code provisions. They explain the statute but they also examine it critically bringing in their comments based on considerations of a social or economic character. They often compare the solutions of the French Codes with foreign legislation and they reserve to the interpretations given by the courts—to the *jurisprudence*—their deserved place. The modern *doctrine* no longer distinguishes and treats separately the analysis of the statutory provisions and the judicial decisions. It endeavors to make a scientific *exposé* of the whole civil or commer-

<sup>33</sup> In 1954, the last edition of MÉTHODES D'INTERPRÉTATION ET SOURCES EN DROIT PRIVÉ POSITIF was published in two volumes. The other *chef d'oeuvre* of Génys (SCIENCE ET TECHNIQUE EN DROIT PRIVÉ POSITIF) had its last edition in 1957 in four volumes.

cial French system, bringing to the fore its origin, its internal mechanism and trying to foresee its future development.

The important treatises of civil law in the 20th century are usually classified as follows:

A. The Great Treatises:

(1) *Traité théorique et pratique de Droit Civil of Baudry Lacantinerie*. The publication of this treatise in 29 volumes was started in 1895 by a group of professors under the direction of Baudry Lacantinerie.

(2) *Cours de Droit Civil Français* by Charles Beudant, published by his son Robert Beudant, beginning in 1896. A second edition (1934-1953), under the direction of Lerebours-Pigeonniere comprises 19 volumes.

(3) *Traité Pratique de Droit Civil Français* by Planiol and Ripert, second edition (1952-1957) in 14 volumes.<sup>84</sup>

B. The Textbooks, in three or four volumes, corresponding to the former three or to the present four years of curriculum of the *licence en droit*:

(1) *Cours élémentaire de Droit Civil* by Ambroise Colin and Henri Capitant. Published since 1931 by the former dean of the Law Faculty of Paris, Leon Julliot de la Morandière, it appeared in 1953 under the title: *Traité de Droit Civil* d'Ambroise Colin et Henri Capitant *refondu par* L.J.dela Morandiere.

(2) Planiol et Ripert, *Traité Elémentaire de Droit Civil*. The new edition, prepared by professor Jean Boulanger will comprise four instead of three volumes; the first two volumes were issued in 1956 and 1957.

(3) Mazeaud (H.L.etJ.): *Leçons de Droit Civil*. The first two volumes (of four) were published in 1955 and 1957.

(4) Carbonnier (J): *Droit Civil* (two out of four volumes published in 1955 and 1957).

(5) René Savatier: *Cours de Droit Civil*, three volumes (1947-1950).

Although the above-mentioned *Traité Elémentaire de Droit Civil* by Planiol and the *Cours Elémentaire* by Colin and Capitant were originally devised as textbooks to be used for teaching purposes, they have become the standard works on civil law for all French lawyers. They are "the first books that a practitioner will examine when he is faced with a question of *Droit Civil*."<sup>85</sup> The

<sup>84</sup> See book review by Professor Yntema in 2 AM. J. COMP. L. 260 (1953).

<sup>85</sup> Cf. FRENCH BIBLIOGRAPHICAL DIGEST 13 (1952).

content of each work and the plan that has been followed are to a large extent identical. The first volume contains a general introduction to civil law and then examines the law of persons: marriage and divorce, parents and children, status of infants and lunatics and their capacity to act, and a part of the law of property. The second volume is concerned with the law of contracts, the law of torts, and another part of the law of property: pledges, hypothecation, and other security devices. The third volume deals with property relations between husband and wife (*contrats matrimoniaux*), with the law of succession, testate and intestate, and with donations.

Besides the general treatises on *Droit Civil*, mention must be made here of two important books on the law of torts (including breach of contract and the law of damages): *Traité théorique et pratique de la responsabilité délictuelle et contractuelle* (three volumes, 4th edition, 1948-1950, Sirey) by Henri and Leon Mazeaud, and *Traité de la responsabilité civile en Droit Français* (two volumes, second edition, 1950, Librairie Generale de Droit et de Jurisprudence) by René Savatier. As it was said, the statutory provisions of the Civil Code concerning the law of torts are limited to a few short articles. The treatises devoted to this field reflect not only the contribution brought to certain subjects by *la doctrine* but also by the judicial decisions, *la jurisprudence*, the task assumed by works like those written by Messrs. Mazeaud and Savatier being to present an *exposé* of the law of torts as construed by the courts. Although it is not dealt with by Code Napoleon, the copyright is considered in France as being within the province of *Droit Civil*. Henri Desbois' *Le Droit d'Auteur* (1950, Dalloz) is a comprehensive book on the subject. The most recent treatise on Patent Law is Dean Roubier's *Le Droit de la Propriété Industrielle* in two volumes (1952-1954).

On Civil Procedure, Morel's *Traité Elémentaire de Procédure Civile* (1949) deals with organization of the ordinary courts (not with that of the administrative tribunals), jurisdiction and venue of these courts, right to sue, procedure before the Courts (including the taking of evidence), judicial decisions, remedies against a judicial decision, costs, arbitration and legal aid. Under the topic *Voies d'Exécution*, consideration is given to the manner of enforcement of judgment in civil and commercial causes of action. More extensive but older treatises on Civil Procedure

and *Voies d'Exécution* are Garsonnet et César Bru: *Traité théorique et pratique de procédure civile et commerciale*, 9 volumes, 3d edition, 1912-1925 (Sirey), and Glasson, Tissier, Morel, *Traité théorique et pratique d'organisation judiciaire, de compétence et de procédure civile*, 5 volumes, 1925-1936.

On commercial law, the treatises published after the promulgation of the Code adopted the exegetic approach, without meeting with the recognition obtained by the first commentaries of the Civil Code. The many volumes published between 1840 and 1890 no longer present a practical interest. The modern science of commercial law was born in France at the end of the 19th century with the treatises of Lyon Caen and Renaud and with those of Thaller which, revised by Amiaud or Perceou, have had many editions.

Today, *Cours de Droit Commercial* by Jean Escarra (Sirey, 1952-1953) and *Traité Élémentaire de Droit Commercial* by Georges Ripert (Librairie Générale de Droit et de Jurisprudence, 1954-1955) have, in the field of commercial law, a popularity and authority comparable to the standard books on civil law by Colin and Capitant or Planiol. They deal with the status of commercial enterprises, partnerships and corporations, negotiable instruments, banking operations, jurisdiction in commercial matters and bankruptcy. The most recent *traités* are (a) *Traité théorique et pratique de droit commercial*, by Jean Escarra, Edouard Escarra and Jean Rault (three volumes on corporations, *Les Sociétés Commerciales*, 1950-1955, and two volumes on *Les Contrats Commerciaux* by J. Hemard, 1953-1955), and (b) *Traité de droit commercial* by Dean J. Hamel and G. Lagarde, of which the first volume was published in 1954 and the second volume is to be issued soon. On Maritime law, the standard work is Ripert: *Droit Maritime*. On Banking, negotiable instruments, etc., Hamel's *Banques et Opérations de Banque* (two volumes published so far). On the law of insurance (other than maritime) there are two *Traité d'assurances terrestres*, one by Picard (1950) and the other by Sumien (1957).

### *Legal Periodicals*

Unlike the situation existing in the United States, the French law reviews are specialized as their titles indicate: *Revue Trimestrielle de Droit Civil*, 1902ss.; *Revue trimestrielle de Droit Commercial*, 1948ss.; *Revue des Sociétés*, monthly, 1883ss. (corpora-

tions); *Revue du Droit des Faillites et des Liquidations Judiciaires* (bankruptcy), 1947; *Revue Française de Droit Aérien*, quarterly, 1946ss.; *Le Droit Maritime Français*, 1923ss., fortnightly; *Revue Générale des Assurances Terrestres* (insurance), 1930ss.; *Revue Critique de Droit International Privé*, 1934ss., and so on.

The specialization of the various legal periodicals explains the absence in France of any Index to Legal Periodicals or Legal Periodical Digests. To be sure, the specialized law reviews cite and classify the various articles published within the special field to which such reviews are dedicated under appropriate headings. *Semaine Juridique (Jurisclasseur Périodique)* gives as a *Revue des Revues* some abstracts of annotations and articles in the leading legal periodicals.

As non-specialized law reviews should be listed Sirey, Dalloz, Gazette du Palais and *Semaine Juridique*, mentioned above as Judicial Reports but which in the part devoted to annotations, chronicles and articles correspond to an American law review with a similar content.

### Conclusion

The above inventory of basic French materials on Civil and Commercial Law does not call, actually, for any conclusion. Comparative Law, as anything else, needs its own tools. The lawyer whose curiosity extends beyond the limits of his own national system of law must know something about foreign law books besides whatever he already knows about legal materials in his own country. At this time of genuine interest in comparative law studies in the United States an appropriate way of introducing an American lawyer into a "civil" system of law is the kind of imaginary visit we have just completed in a French law library. For although, as it was pointed out,<sup>36</sup> it is no longer possible to speak of a civil law system (the different civil law countries having instituted their own national systems) the French codes, especially the Civil Code, had a tremendous influence on codification in almost every country outside the common law jurisdictions, having been either integrally adopted or closely followed by Belgium, Luxembourg, the Netherlands, Italy, Spain, Portugal, Rumania, Greece, Egypt, in the province of Quebec, in Louisiana and in several of the

<sup>36</sup> Cf. Rheinstein, "Teaching Comparative Law," 5 UNIV. CHI. L. REV. 615 (1938).

South American countries, in Argentina, Bolivia and Uruguay. A French lawyer may not know the solution to a specific problem in Spanish, Greek or Bolivian law but in any "civil-law" library he will be familiar with the titles of the volumes and with their setting on the shelves and if he knows the language he will probably be able to pick up the right book for the problem he is working on. In a court room in Rome, Lisbon or Buenos Aires it may happen that he will see lawyers supplementing their quotations from native authorities with those borrowed from Aubry and Rau, Planiol, Colin and Capitant. Conversely, the names of foreign authors may be heard quoted in French courts. Laurent, author of the celebrated *Principes de Droit Civil* was Belgian. Vivante, whose treatise on Commercial Law has been translated into French, was Italian.

While proceeding with our imaginary visit, we have assumed the part of a guide, whose assistance, we think, is always useful to a guest on the premises for the first time. Bibliographies<sup>37</sup> are one of the most precious tools of the comparativist, but bibliographies, as such, are of little help to the beginner. The mere knowledge by an American lawyer of the differences existing in the "hierarchy of sources and forms"<sup>38</sup> in France and in the United States will not enable him to render consultations to a client on French law without any assistance from a practicing French lawyer. But besides the satisfaction of his curiosity, the American lawyer can draw some benefit from his understanding of the mechanisms of the civil law even in the course of his profession: he will be able to communicate with a civil-law lawyer, and in our times, we believe, this is not too small a thing. The simplest way for an American attorney with sufficient knowledge of French to study a problem in French law is for him to do what one of his French colleagues would do when confronted with such a problem. The little codes *Dalloz* have a very good topical index and the pertinent code provisions are relatively easy to be found. The references accompanying every article of the code indicate the other provisions of all the codes which may be relevant to the

<sup>37</sup> For a complete bibliography on Foreign and Comparative law, in English, see: SZLADITS, A BIBLIOGRAPHY ON FOREIGN AND COMPARATIVE LAW (1955). A supplement to this bibliography, including books up to 1956 and articles up to 1955, was published in 5 AM. J. COMP. L. 341 (1956).

<sup>38</sup> See Pound, "Hierarchy of Sources and Forms in Different Systems of Law," 7 TULANE L. REV. 475 (1933).



matter.<sup>39</sup> They also indicate the most important interpretations in the matter given by the courts, some of them annotated by some well-known authority. In order to save time and obtain from the beginning a more comprehensive *exposé* of a given subject, once the main statutory provisions have been ascertained or even before too a laborious research in the codes, legislation or judicial decisions, the reading of the pertinent chapter in one of the standard textbooks above mentioned will probably constitute a sufficient introduction to the matter. It may be supplemented by consultation of one of the great treatises (*Traité Pratique de Droit Civil Français* by Planiol-Ripert, or *Traité de Droit Commercial* by Hamel-Lagarde, etc.) and of one of the well-known monographs on the subject<sup>40</sup> usually indicated in the particular chapter of the textbook. Of course, as a matter of precaution, the Indexes of the *Gazette du Palais* or of some other law review will be also consulted in order to see that no new legislation has intervened and to know what the latest judicial decisions—if any—had to say on the matter.

To prepare a case thoroughly and to win it in court is certainly as challenging in France as it is in the United States. But in France it is probably easier to "find the rule of law," and it is certainly less expensive to assemble a working law library. In the United States, 500 volumes represent the annual crop of judicial decisions<sup>41</sup> and "there existed in 1947 '274 bulky volumes aggregating 267,777 pages' of statutes, supplemented by 56,701 pages of statutes enacted in two years, 1946-1947, according to Dean, now Chief Justice, Vanderbilt."<sup>42</sup> We know that no American lawyer needs all the statute books and judicial reports for the practice of his profession. But there is still room for him to envy his civil law

<sup>39</sup> When there is no special provision to the contrary, commercial law for instance keeps its "exceptional" character and civil law must be applied. The law of obligations from the Civil Code constitutes the basis for the juristic techniques of commercial transactions. Several provisions of the *Code Civil* expressly ask for the application of commercial legislation, thus implicitly attesting the fact that civil law remains *le droit commun* (the common law), the "substratum" of all commercial legislation. Cf. Escarra, "Cours de Droit Commercial, 1945-1946," *LES COURS DE DROIT*, p. 40.

<sup>40</sup> GRANDIN, *BIBLIOGRAPHIE GÉNÉRALE DES SCIENCES JURIDIQUES, POLITIQUES, ECONOMIQUES ET SOCIALES*, 3 volumes (1926), covers all legal works published in French since 1800. Nineteen supplements brought the book to date on January 1, 1951 (Sirey, ed.).

<sup>41</sup> At the time of Judge Story, only 20 volumes of Reports were published. See "Joseph Story's Sketch of American Law," 3 *AM. J. COMP. L.* 3 at 25 (1954).

<sup>42</sup> Rabel, "Private Laws of Western Civilizations," Part IV, 10 *LA. L. REV.* 431 at 438 (1950).

brethren in France who can feel fairly well equipped as far as statute books and judicial reports are concerned, with just the Codes and a subscription to the monthly *Gazette du Palais* and a collection of its Indexes. An encyclopedia such as *Jurisclasseur* or *Encyclopédie Juridique Dalloz* is certainly very useful but many French lawyers do without it, especially those who since law school acquired the habit of "instinctively" going to their Colin and Capitant or Planiol-Ripert for questions of civil law, their Mazeaud for questions of *responsabilité civile*, their Escarra, Ripert, Hamel, for problems of commercial, maritime or banking law.

It has not been our purpose here to draw any conclusions concerning the American and French systems of law nor to make any suggestions concerning the coming closer together of the common law and civil law systems, since it has been repeatedly and often convincingly emphasized that many difficulties in this direction are hard to overcome. It may be said parenthetically here that—as it should be—some of the most appreciative comments of the Anglo-American system have come from the pen of civil-law lawyers<sup>43</sup> and that, conversely, the civil law system has been the object of genuine admiration from many a common-law jurist.<sup>44</sup> Mr. Thibaudeau Rinfret, Chief Justice of Canada, a country where both systems are applied, confesses that in his experience he was struck by the similarities rather than by the differences and concludes that "as systems of legal principles both systems proved themselves in all respects reasonably adequate to the needs of our time."<sup>45</sup>

The function of comparative studies is not limited, however, to a mere description of foreign institutions. We cannot refrain, therefore, from hoping that American lawyers may realize that in other countries "legal research" is a simpler matter, and thus may be encouraged to see if something can be done to ease the

<sup>43</sup> See, e.g., the recent article in 8 *REVUE INTERNATIONALE DE DROIT COMPARÉ* 426, No. 3 (1956) by Lepaulle, "Données Fondamentales de L'Administration de la Justice dans les Pays Anglo-Saxons."

<sup>44</sup> Judge Henry says: "The Civil Law not having the general doctrine that applied law makes law, does succeed in solving nearly all of the problems presented to the courts by the application of general principles, apparently to the satisfaction of all concerned. . . . Such a conception is foreign to the Common Law legist. He is accustomed to look at the law as something very complex, as consisting of endless rules, to be sought in reports of cases as numerous as the sand of the sea." 15 *A.B.A.J.* 11 (1929).

<sup>45</sup> In SCHWARTZ, *THE CODE NAPOLEON AND THE COMMON-LAW WORLD* (1956).

burden created by the enormous quantity of legal materials with which the members of the legal profession in this country are obliged to work. Does not the *Restatement* remind us of Bourjon's *Le Droit Commun de la France* (1747), in which he tried to stress the unity of a French law above the differences existing among the laws of the different provinces? And did not the simplification of French law come from the joint efforts of lawyers and legal writers, long before the promulgation of the Napoleonic Codes?