

THE FRENCH CIVIL CODE

(as amended to July 1, 1976)

Translated with an Introduction

by

John H. Crabb

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the: dual problem of
legis:

① Uncertainty
② unrepresentative (limits of democracy)
③ Info. problem
④ Content more likely to
be socialist/interclass
(public choice.)

some
comments.

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PREFACE

I take particular pleasure in introducing this work and recognition is owing to Professor John H. Crabb for accomplishing the notable task of rendering the French Civil Code accessible to American lawyers.

About forty years ago, when Frenchmen attended international meetings, their foreign colleagues, and particularly those who belonged to countries of the common law, looked upon them with envy: they brought one or two small books, and they consulted them like a Bible containing all the essential provisions of their law. It was their codes. Napoleon, at the beginning of the nineteenth century, at the same time when he established in France an administration whose essentials remain today, gave us several codes; the principal and first one was the civil code whose translation into English is the subject of the present work.

These codes, by reason of their excellence, remained without great change during the nineteenth century and served as models for numerous foreign codes.

Since the beginning of the twentieth century, and especially since the Second World War, they have been extensively amended, even revolutionalized. Thus it is that our Commercial Code is but a skeleton, the greater part of provisions of interest to commercial law being found now in other statutes.

But on the other hand, so far as the civil code is concerned, if more than 700 articles have been amended, the others still reproduce the text of 1804. Such is the case particularly for the greater part of the provisions relative to contracts and obligations.

And for all these matters it suffices to refer to the very complete introduction prepared by Professor Crabb.

It seems to us opportune also to emphasize the following points:

From the point of view of the specialist in comparative law, the French Civil Code is certainly one of the best examples of legislative text from a country of the civil law.

From the point of view of form, the work prepared by Professor Crabb seems to us to have succeeded particularly well.

In a very clear and complete introduction is found a veritable small course in the history of French law.

The text of the code is itself remarkably well presented and, each time that an article has been amended, references to the amending texts are indicated.

The extensive glossary will be very useful to American jurists; it will permit them especially not to allow themselves to be fooled by "false friends." The term *équité*, for example, does not correspond entirely to English or American "equity."

Lastly, an alphabetical index permits an easy finding of the particular provision which is being sought.

We are convinced that this important work will help jurists of our two countries to know each other better, and we owe special thanks to Professor John H. Crabb to have thus contributed to strengthening the bonds of two centuries which have existed between our two countries.

Roger Dorat des Monts
Rédacteur en Chef
de La Semaine Juridique

Paris, December 1976

FOREWORD

The need for a new translation of the French Civil Code has been felt for a long time. Previous translations were not many, and in the last few years they became out of print. It may be said that there are no perfect things on this world, and certainly this was true with the above translations. In his introductory comments, Professor Crabb explains why it is so difficult, or even impossible to convey the meaning of terms used in one legal system in another language to jurists in a foreign system where there are no corresponding institutions and where legal reasoning follows a different path. In addition, purely human factors and shortcomings make the task of translating correctly legal texts a Herculean job. Besides fluency in both languages, an excellent knowledge of two legal systems is a prerequisite.

For many law professors, lawyers and students, the new translation will be the only one available. Professor Crabb undertook his task with full understanding of his responsibilities. Our observations are intended to be a foreword rather than a review of the work he has performed. Therefore, we will abstain from making any evaluation. The future will show the value of the translation and the kind of service it renders to all who have to work with French law but cannot use the original texts. The translator had the necessary background to undertake his delicate and tedious work. Besides teaching and doing research in the United States, he traveled extensively, lectured in many foreign countries (mostly French speaking) and is a student of various legal systems. His interests are not limited to one or two fields of the law. He considers a legal system as one entity, its various departments being interwoven and interdependent. Such an approach is an asset for an undertaking of this kind.

Serious problems confront the comparatist in every phase of his work—studying, doing research, teaching, testifying as an expert, drafting legislation; but they are particularly acute when a legal text has to be introduced faithfully to foreign readers. Professors in the United States are familiar with these difficulties, when trying to use the case method for teaching American law in a foreign language or illustrating courses and seminars in comparative law with statutes and judicial opinions of other countries. No matter how diligently and how long one works on the final text of a translation, one cannot escape a feeling of frustration. One is never satisfied with the result. For a translator, such a reaction is more than a daily occurrence. He lives with it throughout his labors.

But the task has to be performed, even though perfection will never be achieved. Even the most respectable code translations have been criticized—and the criticisms have been warranted. A serious mistake is to translate the German term *Handlungsfähigkeit* as capacity to enter into commercial transactions; a more serious error is to understand the word *bâtiment* in art. 1386 of the French Civil Code as meaning a ship rather than a building. In these extreme cases, mistakes could be avoided by checking, double-checking and re-checking; but in countless instances, a precise rendition of a legal concept from an unfamiliar system cannot be achieved. Thus, the common law institutions of trespass or battery, as basic and simple as they are, defy endeavors of translation into French.

Persons having some comparative law background who use translations of foreign codes are aware of these troubles and of hazards created by reliance on the accuracy of the translation without any reservation. But even for them some comments and introductory observations may be helpful. For those readers who have never had

extensive experience with comparative and foreign law, such supplements to the translated text are vital. They are furnished by Professor Crabb who warns the public against an uncritical approach to the words and terms used in the translation and explains the possible meaning of some of them in a valuable appendix bearing the title of "glossary".

The fact that a civil code is the basic document in the life of a civil law country does not need elaboration. Most legal problems of the jurisdiction revolve around it. The knowledge of a legal system depends on the understanding of its civil code where such exists. In the world of today, with the ever increasing intensity of international and transnational relations, presentation of foreign law to the legal profession is a must—and translations are the most obvious and important tools in familiarizing jurists with other legal systems, just as translations of literary works are necessary for serious studies of foreign literature. It has been said that good translations of poems and fiction are not easy, and only most able translators achieve desired results. As a matter of fact, if successful, translators gain recognition, make history in the development of literature, are given awards and prizes; and still their task is infinitely easier than that of translators of legal materials. In literature, one word may freely be replaced by another. It may, and it has happened that the translated text is an improvement over the original. The use of the language may happen to be more efficient, the style may be more elegant, the descriptions more colorful. But in the law, there is no room for improvements or changes. Every term has an established meaning and any *licentia poetica* may lead to confusion, misunderstanding, misapplication of the law. Precision and consistency in the use of words, which are virtues in every field of learning, are elementary requisites in the legal profession, particularly essential in the work of a translator.

Unification of the law would base legal relations between persons in various jurisdictions on more certain grounds, and the result of possible disputes would become more predictable. To minimize uncertainties and frustrations, a trend has been felt, in federal unions, to adopt uniform rules in the legal systems of the members of federations. Commercial law, as the field of law having less local flavor than any other, was the first to undergo the process of official or unofficial codification and to be either adopted by members of the federal unions or centrally enacted, if the basic law permitted such a procedure. This is what happened in Germany, Switzerland and the United States.

But uniformity of legal rules which regulate relations between human beings living in different jurisdictions is vital not only within federal unions but also in countries whose citizens have legal transactions with each other. The Rome Institute for the Unification of Private Law is the most outstanding expression of this need, and the pre-war project of a Franco-Italian Code of Obligations has served as a fine example of legal cooperation between jurists of two nations which have some common features. On a larger scale, the necessity for the same treatment of legal problems in transnational relations has appeared in the countries of the Common Market which do not have the same legal heritage and background. This has given rise to spectacular developments in "international legislation", organization of the administration of justice, and judicial decisions.

However, even complete uniformity will not bring about the desired certainty of the law if the same legal text is in force in various languages with apparent discrepancies and possibilities of conflicting application. This problem may be felt in every country, be it federal (like Switzerland) or unitary (like Belgium) where there is more than one official language. Within the same area of sovereignty, it is moderated

by the existence of a national supreme court which must be followed by all others. Without such a body, linguistic problems, along with some others, may be acute.

Prima facie, Professor Crabb's translation is well-suited to be presented to the readers for evaluation in terms of its actual use. They will find data on the statutory history of each article which has been affected by legislation. Again, for the uninitiated, the discussion of the historical and comparative background of the legal rules are provided, helpful for the acquisition of a proper perspective.

We hope that the future may prove Professor Crabb's translation to be as accurate and reliable as possible. May it be used frequently and with confidence, and may it promote the scholarship in the field of comparative law which, in turn, should contribute to a better understanding between the nations and the resulting friendship between the members of the international community!

John N. Hazard
Columbia University

Wenceslas J. Wagner
University of Detroit

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INTRODUCTION

I. Comparative Law Setting

The aspects of comparative law involved in presenting the French Civil Code in English go far beyond routine linguistic considerations. They cross the great watershed between the two basic systems of western law, the Anglo-American and civil law systems. The designation of "common law" rather than Anglo-American is also respectable, but is less accurate. Also, "Romano-Germanic" is sometimes used rather than "civil law" as the name of the other great system. It has the appeal, among others, of offering a more satisfying common denominator with "Anglo-American," but in fact has secured less widespread usage.

With one major reservation, these two systems may be said to divide between them the essential totality of law in the world. The reservation concerns the legal systems of countries with official communist régimes and the notion that their law should be segregated from the other two as a third basic system. Such segregation does not result if one applies the formal classifying criteria of "sources and techniques" to determine groupings of legal systems. But it is considered that the very function which Marxist ideology attributes to law itself is so different from western concepts as to create a legal system which realistically should be considered as separate. Islamic law can be considered as a minor reservation to the gross bi-polar classification of law in the world. It has almost disappeared as an independent legal system of any sovereign state. It is more importantly present as a traditional law having a limited field of operation within national legal systems organized as belonging to one of the great basic legal systems mentioned above. Other systems of traditional law still exist which function exclusively in subordination to one of the great systems. They are principally Hindu law and the customary laws of Africa.

Such is the general setting of our focus on the distinction between Anglo-American law and the civil law, and ultimately as it is more particularly manifested between American and French law respectively. Receptivity to a translation of the law of a system of the other legal family involves an awareness of the basic differences in fundamental legal institutions. This is what comparatists mean by the differences in sources and techniques. The translation cannot recast these sources and techniques and employ those used by the legal system into whose language the translation is made. The translation seeks to make the foreign system linguistically intelligible, but the user must be prepared to find legal concepts and notions that are unknown in his own system. This can also mean that his own language has no vocabulary to express such ideas, with the result that he may be surprised sometimes by unexpected linguistic usages. Excessive concern for the user's comfort in reading would introduce self-defeating inaccuracy. A translation cannot at the same time function as an explanatory treatise.

Between national legal systems belonging to the same basic family there are similarities of legal institutions which generally permit relatively easily a comprehension and accommodation of the differences that exist, as compared with the much greater difficulty between two systems belonging to different families. Nevertheless, each national legal system is distinct, and between members of the same legal family varying degrees of comparative difference exist. This is also true as between states of

the United States, which in terms of legal system are each almost "sovereign," so that in a strict sense "American law" is a kind of geographical expression rather than a formal reality. Nevertheless, the translation is presented with reference to the general unity of American legal culture. This necessarily excludes the particularisms of British-oriented legal systems on the "Anglo-" side of the hyphen. But for users of such background the family similarity of Anglo-American law should eliminate serious difficulties.

The distinctions between the Anglo-American and civil law systems are considered to stem from their different essential hallmarks. Anglo-American law issued originally from the activities of the English royal courts, and preoccupation with judicial decisions continues to reflect its essential idiom. The civil law on the other hand looks to legislation as the nucleus upon which legal system is erected. And the basic codes are the most seminal of such legislation and set the tone for the entire legal system. The Civil Code is the most basic of the codes and the most fundamental and pervasive single element of all French law. The same statement is applicable, though in lesser degree, to the entire system of the civil law due to the seniority of this Code Napoleon and to its profound influence in many countries of this legal family, including ones that never knew the imprint of French empire.

II. Historical Background of the French Civil Code

The French Civil Code may be said to have initiated the contemporary system of the civil law as we know it with its codifications. But it did not result from a flash of inspiration or genius by Napoleon or anyone else. Rather was it the cumulation of centuries of legal history and the interaction of Roman law with the localized and customary laws that evolved in Europe after the fall of Rome.

The barbarian invaders who set up their kingdoms in the former territories of the Roman Empire by no means despised things Roman. On the contrary, they sought to emulate for themselves those aspects of the superior Roman civilization which they admired. This included Roman law, and some of them sought to adopt for themselves suitable parts of it, which came to be called the *leges romanorum barbarorum*. Other efforts did not seek to adopt Roman law as such, but with an awareness of Roman techniques, sought to cast Germanic tribal laws in a similar manner, through what are known as the *leges barbarorum*. However, such efforts at ordering legal systems did not thrive in the chaotic conditions that prevailed in the post-Roman period, and they faded into oblivion. Roman law generally ceased to be the law in practice, and was supplanted by localized laws of a customary nature upon which feudal laws became engrafted. Roman law represented a degree of sophistication not in keeping with the rude societies of the early Middle Ages. It became largely an academic kind of law, preserved mostly in monasteries which were the centers of scholarly activity. However, it had some survival in application in Italy and some other heavily Romanized parts of the former empire.

But the Eastern Roman, or Byzantine, Empire centering on Constantinople was vigorously continuing Roman civilization. Indeed, it was here, in the century following

the fall of Rome itself, that perhaps the most significant event of Roman law took place. This was the promulgation around 530 of the Code of Justinian as the systematizing of the whole of Roman law as it had developed. This convenient packaging of Roman law ultimately had particularly significant consequences. The University of Bologna was founded in Italy in 1187 at the beginning of the development of European universities. Because of the availability of the Digest, the one of the four parts of the Justinian Code especially designed for instruction in law, the teaching of law was highly feasible. Law was one of the four faculties with which the University of Bologna began its existence, and was a standard part of the curriculum of universities that quickly spread throughout Europe. And the law taught was Roman law, based on the Digest. As students graduated and took up professional work they naturally sought to see applied in practice the law which they had arduously learned at the university. Here, then, was an impulsion of continually increasing strength toward the resurrection of Roman legal concepts as the law in practice.

This is the legal tableau presented by the Europe of the later medieval period. The central royal governments were typically weak, with large autonomy enjoyed by local feudal magnates. This militated against unified law issuing from a central source and favored the predominance of local law of a customary nature. Yet the glories of ancient Rome and its unity represented an ideal toward which medieval Europe aspired, however ineffectually. The usually shadowy Holy Roman Empire is a manifestation of this aspiration, wherein it was hoped that Christendom could be temporarily united under one emperor in tandem with its spiritual unity under the pope. Roman law, however vaguely understood or infrequently applied, nevertheless enjoyed prestige as a superior kind of law, and as a hope of realizing the ideal of unity so far as law was concerned. Even if its direct application was inhibited, its analogies could be urged as persuasive reason, as distinguished from binding authority. There were also royal "receptions" of Roman law, whereby the application of Roman law by courts and officials was authorized at least as an option. The general dynamics of the situation were towards Romanization of the law.

Unity of the law was assuming ever greater importance as a desired objective. The petty systems of local law were increasingly unsuitable as nation-states emerged, with the royal authority succeeding in subjecting feudal autonomies to its regular control. The local law was usually not in written form, so that its low degree of consistency and accessibility was increasingly unsatisfactory as interregional communication became more common and the demands of legal regularity more exacting. The written form of Roman law was an obvious antidote to this situation. In addition, the Justinian Code stood as an example of the technique for unifying law. The most successful of medieval efforts to deal with this situation was the Siete Partidas instituted by Alfonso X of Castile around 1250, and these "seven parts" of the law served, with two important updating revisions, as the basis of Spanish law until the adoption of a code along Napoleonic lines in 1886.

The situation in France in the Middle Ages and early modern times was that of a mosaic of local customary legal systems. The country was, however, divided into the land of customary law—*le pays de droit coutumier* in the north—and the land of written law—*le pays de droit écrit* in the south. Roman law became received as admissible in principle throughout France as persuasive authority (*raison écrite*). In addition its application was authorized, but apparently not obligatory, in the land of written law, although it seems doubtful to what extent it actually was applied even in the south in preference to the local law. Occasionally under local initiatives these customs were reduced to written form. But the major impulse for putting customary

law into written form came from the Ordinance of Montils-les-Tours in 1453 under Charles VII, whereby it was ordered that this be done for all the customary laws of France. While execution of this command was dilatory and spasmodic, by the beginning of the eighteenth century the work was essentially accomplished. It was not per se either codification or Romanization. However, in the process the smaller, vaguer and overlapping customs tended to disappear and to be absorbed by the larger and stronger ones, so that some sixty customary legal systems emerged in written form from an original list of some three hundred. The Custom of Paris in its version of 1670 became the leading custom, and reference could be made to it when other customary laws were deficient or uncertain in providing solutions. This Custom of Paris was also the basis of the law of Quebec until its adoption in 1866 of a Napoleonic type of code.

This simplification and regularization of the customary laws did much to prepare the ground for ultimate codification. Moreover, the drafters would tend to borrow from the written Roman law sources to cover gaps and uncertainties that were found in the customary laws. In early modern times further Romanistic infusions, although adapted to contemporary conditions, came from prestigious writers on legal doctrine known as pandectists, rather in the tradition of the juriconsults of the ancient Roman Empire.

This state of evolution of the law caused increasing agitation to go beyond mere written compilations to the creation of unifying and rationally ordered codifications. Despite the progress already registered, Voltaire could cast one of his characteristic barbs, with the legal system as his target, by saying that one changed his law as often as his horse, such relays then being a matter of about thirty miles. There was obviously nothing novel or original in the idea of codification. There was always at hand the enduring example and tradition of the Code of Justinian whose influence had become so pervasive in European law. In addition to the *Siete Partidas*, the Scandinavian countries in later centuries had each developed a sort of national codification, though none of these seem to have significantly influenced their neighbors in a direct way. In France during the reign of Louis XIV there were four *Grandes Ordonnances* which in effect codified on a national basis certain defined parts of the law. But despite such ferment, the natural resistance and inertia of long-encrusted legal practices and the resulting entrenched and local interests remained as formidable obstacles to realization of the appealing ideal of unification of the law through national codification. The Prussian code of 1794, although it proved to have little influence in the wake of the ensuing Napoleonic upheaval, is considered to be the first of the modern kind of national codifications.

The Revolution with its categorical break with the *Ancien Régime* was a propitious moment for France to undertake codification of its law, if revolutionary turbulence were not to inhibit such a serene kind of activity. The new republican government passed legislation in 1792 directing codification of the law. But it was not until the strong hand of Napoleon had imposed internal stability and dominated external enemies that the project was accomplished in 1804.

Chief responsibility for drafting a civil code as the first of the codifications was given to a commission headed by Portalis and Tronchet, two lawyers of distinguished reputation. They were installed comfortably in the chateau at Fontainebleau, where the elegant table on which they labored stands on display, and assisted by colleagues they accomplished the actual drafting in a matter of months. Aided notably by their colleagues Maleville and Bigot-Préameneu they drew upon French law as it had developed with its blend of Romanistic and customary elements and the recent influ-

sions from legislation of the Revolution. Portalis, of academic bent, emphasized the Romanistic aspects, while Tronchet was a practicing lawyer attuned more to the customary elements. These different penchants, rather than frustrating collaboration, were ideal for producing a code blending the two basic elements of the then existing French law in its dispersed condition. Their task in creating a civil code was to distill the most basic and enduring elements of private law whereby the essential rights and obligations of and between citizens in their private affairs of life would be set forth. The code was to provide a scheme complete in itself for this indispensable element for the operation of a viable society, in terms of fundamental values assumed by European civilization and compatible with the innovations of the Revolution. Though the text of the Code was completed in 1804, it was not put into effect until 1805, which is also used in referring to it.

The French Empire of Napoleon annexed outright the entire Low Countries (the present "Benelux") and large parts of Germany, Italy and Switzerland, to all of which the Civil Code was applied (leaving aside from discussion *trans-Adriatic* territories known as "Illyria" that were also annexed). In addition the Code was adopted in some client states or protectorates, this occurring in Poland and some German states which had not been annexed to France itself. Upon recovering independence these countries, with minor exceptions, did not summarily throw out the Civil Code as part of the law imposed by a foreign conqueror under whom they had languished. Rather they seem to have judged it on its own merits, found it superior to their earlier systems of law, and retained it, with whatever modification they wished, as an ongoing basis of legal system. The German and Swiss areas ultimately did depart to join different movements of their own national laws which subsequently resulted in each establishing its own system of codification independently of the Napoleonic model. But otherwise the scheme of the French Civil Code extended later into some other European countries and areas which it had not entered at the time of the original Napoleonic impulse.

The Civil Code followed the French flag around the world as France developed the bulk of its colonial empire in the nineteenth century. These colonies upon becoming independent retained the Civil Code and other French legal institutions as the bases of their modern legal systems. The Civil Code has also made appearance in parts of the world that were never touched by French sovereignty. Latin American countries, in seeking as the basis of legal system something more modern than the Spanish law which they had inherited, leaned heavily on the guidance and framework of the French Civil Code. Parts of the Arab world which had experienced British rather than French colonialism, after achieving independence constructed their modern legal systems on French models rather than to continue with law based on English style. Non-European societies which were never subjected to European colonialism ultimately replaced their traditional legal systems with modern law, and in so doing in varying degrees borrowed, adapted or at least studied the French Civil Code. It seems fair to say that the French Civil Code is the most pervasive single phenomenon of the entire world of the system known as the civil law.

These expansions or peregrinations of the French Civil Code beyond the traditional frontiers of France are primarily in terms of providing a framework for organizing a fundamental aspect of legal system and as a point of departure for legal reasoning, rather than of adopting the Code *in toto* or *verbatim*. It is a question of adaptation and of picking and choosing, and closeness to the French original is variable from situation to situation. Many articles are specifically applicable only in France or make sense only in terms of a society whose institutions and development are simi-

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lar, at least potentially, to those of France. Excessive enthusiasm for the French Civil Code caused Bolivia to copy too much of its text in 1845 for that country's own new civil code, with ludicrous results, given the vast differences in circumstances of society as between France and Bolivia. Even the most transportable articles which abstractly state basic legal principles are typically recast in an idiom varying from the French original.

The concise nature of a code makes it eminently practical when it is a question of exporting or importing law into places other than that of its origin. This is so as contrasted with traditional and customary systems, with their diffused and sometimes uncertain sources from which the law must be gleaned anew for each application to particular cases and problems. Hence it is not surprising that countries contemplating the installation of a new legal system should look to a conveniently ready-made basic foreign code, already proven in application, which can be molded and adapted to the more particular needs and purposes in view. Moreover, a code can "stand on its own bottom," and is usable without necessarily importing encumbering authoritative interpretations already given to it elsewhere.

★ The French Civil Code has had a marked preeminence, though not a monopoly, in the matter of exporting codes in the world of the civil law. Various rather apparent reasons can be offered for this preeminence. It enjoyed seniority as the first basic code to emerge from the movement toward codification and unification which had widespread and continued application. Its most serious competitors were decidedly latecomers. The imperial impulse given to it by Napoleon from its beginning was clearly a factor. And it managed to divorce itself from the taint of being an imposed aspect of French conquest, except perhaps in Germany to some extent. Rather was it mostly viewed as part of the continuing benefits secured by the French Revolution, and hence congenial to nineteenth century liberal thought. As to acceptability in post-Napoleonic reactionary circles, the fact that the restored Bourbon monarchy of Louis XVIII expressly continued the Code in force surely helped to insulate it from attack as a revolutionary abomination. And it was, after all, the culmination of long-standing movements in legal thought pre-dating the Revolution and not associated with its ideology. Obviously, its presence and availability were powerfully enhanced by the French colonial empire on which the sun never set (nor does it even today). Although the Civil Code may be said to be based on the assumptions of a liberal bourgeois society of Europe, it has no express ideological affiliations or particularisms, and largely presents itself in a manner to be applicable to human society generally. Given the dominance in the world of bourgeois liberalism, at least outside of now communist countries, this neutrality of the Code has furthered its propagation internationally. It also early acquired an international reputation as an excellent professional work of its kind. The longstanding presence of France as a great world power and its international prestige in cultural and intellectual matters, even if sometimes embattled, may generally be cited as significantly contributing to the dissemination of the Civil Code internationally.

✓ England As an addendum to the above historical synopsis, it is to be noted that England did not figure in these developments of continental law. This is despite the fact that England was otherwise a major actor in European affairs and movements during those centuries. The reason for this can be ascribed to the outcome of the Battle of Hastings in 1066 and the resulting Norman French conquest of the Anglo-Saxon kingdom. William the Conqueror then proceeded to wipe the feudal slate clean by displacing all the Anglo-Saxon lords and distributing their lands to his own followers. These newly installed feudal lords were freshly dependant on the king for their be-

nefices and in the midst of a potentially rebellious conquered population. They could scarcely afford to assert autonomy against the royal power in the typical fashion of feudal magnates on the Continent where central governments as a consequence were normally weak. A capable and vigorous ruler, William took advantage of this situation, unusual for the age, of subdued local autonomy, and fashioned a system of strong central administration. He sufficiently institutionalized it so that it developed its own momentum and continued in succeeding reigns regardless of the capabilities of the occupants of the throne.

Eng. L. Most significantly, the royal administration early developed its own courts whose decisions, backed by an effective central authority, were law throughout the kingdom. These decisions became binding precedents for the future, and thus they became the "common law" for all of England. This contrasted with the localized dispersion of law which, as we have seen, prevailed on the Continent in the Middle Ages. This meant that at the time when Europe was turning significantly toward Roman law as a device for improvement and unification of the law, with all the consequences that eventuated, England already had its unified and satisfactory system of national law, and felt no need to resort to Roman law. From this point of original divergence the two continued along paths of separate development, resulting in our present bifurcation of western law. Ⓢ

Had England not become a great power with its own worldwide empire, it might well at some point have conformed to the legal concepts prevailing on the entire Continent. The territorial expansion of English law came about entirely through the imperial extension of British sovereignty, but did not extend completely throughout the British Empire. English law was not established where British sovereignty extended into areas where a Romantic legal system had already become entrenched. This means principally Scotland, Quebec and the South African complex of countries. And the Americans never extended their English-descended law to accompany their acquisition of sovereignty in the state of Louisiana, Puerto Rico and the Philippines. There has been substantial input of Anglo-American law in these cases, especially as to procedural law, and they may be considered "mixed" legal systems, but they usually are classified with the civil law. Anglo-American law is of a traditional nature, and essential to its operations is the availability of indefinitely voluminous reports of judicial decisions, with no completely precise limits for these precedents as to time or location. This has meant that expansion of Anglo-American law as a legal system has depended wholly on the presence of British or American sovereign administration with an opportunity to sink its own roots in the territory in question as to legal practice and precedents and without having been pre-empted by a civil law system. Thus Anglo-American law has not been an item "for export" as described in the case of the civil law and of the French Civil Code in particular.)) Lg. //

III. Notion of the Code

A code is an ubiquitous notion in law, and is certainly no stranger to Anglo-American law. It is simply a descriptive designation of a certain kind or style of legislation. One may ask wherein it is different as between Anglo-American and the civil law, and what is distinctive in particular about the French Civil Code apart from its history. An answer can begin by examining three basic American usages of "code" as an expression or an idea.

In a loosest sense Americans may use "code" as referring collectively to the whole of the legislation of a state. This may mean nothing more than a compiling of all the laws by collecting them together in one place as a set of lawbooks. This includes all the laws that have ever been enacted by the legislature without ever having been officially repealed. Any systematic arrangement by subject-matter is primarily at the discretion of the compiler or publisher rather than through legislative mandate. Overlapping and inconsistent laws and those in desuetude formally continue in the compilation so long as the legislature takes no annulling action. When long outmoded and forgotten laws remain in the statute books they can read as absurd under contemporary conditions, and may be resurrected only by humorists for the sake of a joke. Some states officially call such collections of their statutes "compiled laws," but this does not necessarily exclude more or less popular reference to "the code."

A second American usage is in the classic tradition of a code. This is where the legislature has ordained a systematic arrangement of all statutes under a logical scheme of subject-matter headings. The debris of inconsistent, inapplicable and forgotten legislation is thrown out. It provides a framework whereby new legislation can be inserted in the subject-matter niche appropriate to it. Keeping the code tidy and efficient depends on the legislature, aided by a professional staff, to tend to its statutory housekeeping by indicating the proper insertions and formally repealing or amending superseded or discarded legislation.

A third American use of code is to segregate a particular subject from the rest of the law and give it a systematic and comprehensive statutory treatment. This can occur whether or not the entire body of legislation appears as a veritable code in the second sense just discussed. It is a matter of legislative style and judgment as to when a given subject-matter should be thus singled out and dubbed a particular "code," though it is customarily done with certain areas of the law, for example, criminal law. These particular codes may be very broad in scope or relatively narrow, and there may be codes within codes. Among the very broadest may be cited criminal, procedural and commercial codes, while among the narrower are highway, probate and juvenile codes. The creation of a particular code suggests that its subject-matter is viewed as conveniently susceptible of segregation and as being of more than routine concern and worthy of continuing special attention and treatment. It is a matter of legislative discretion whether subsequent legislation on the same or a similar subject shall be added to a code or left independently outside.

The French practice of codification is like the third of those just discussed of the American. There is no notion of a comprehensive code to cover all French law or legislation. Unless a statute is specifically stated to be inserted as part of a code, it remains independently as a "particular law."

Neither in France nor in the United States do codes have any special legal force or status beyond any other legislation. They can be amended, repealed or superseded as readily as any other statute, by the same or higher legislative authority which originally enacted them. But both cases represent an assessment that the subject-matters of their codes are in some degree especially important to society and of permanent or at least long enduring significance. While there are no inhibitions against making changes in the code as they may seem to be warranted, it is expected that the legislator should take particular care in doing so, in keeping with the seriousness of the original idea of a code and maintaining its internal consistency and cohesion and its rapport with the law and legislation generally. Thus the distinction between codes and statutes generally is a matter of attitude which expectably accords greater prestige and stability to legislation specially invested with the dignified title of "code."

codes v. statutes.

The degree to which such expectations are realized is indicative of the success or quality of a code.

Hence, there are no basic differences between French and American codes as regards their formal concepts. The differences lie in the respective roles which they play, along with legislation in general, in their own legal systems. In the French system, as in the civil law generally, legislation is regarded as the primary and ultimate source of law. Given the attitudes and expectations regarding codes, they more than other legislation normally represent the most fundamental legal notions in terms of being the starting point for legal reasoning and setting the tone for the legal system. When articles of a code form the basis of a judicial decision, they are of course interpreted by the court to resolve the particular case at hand. However, such judicial interpretation does not become an authoritative precedent for subsequent interpretations of an article of the code. However persuasive such a judicial decision may be in effect, future decisions are in theory based on reference afresh to the text of the code itself without its being screened by prior judicial interpretations of it. The opposite is true in the American system, where the final word on the meaning of any legislative text is what the courts say it means. Even new legislation designed to change the law as announced by a judicial decision is itself subject to binding judicial interpretation. Briefly, to find the quintessence of French law, look at legislative texts, and to find the same in American law, look at judicial decisions, including those interpreting legislative texts.

The importance of this theoretical distinction is not to be underestimated in terms of its influence on the different structurings of the two legal systems. However, it is also true that, starting from this polarity, the two systems in routine practice tend to approach each other. The citation of earlier French judicial decisions is perfectly respectable. While it is in the guise of persuasive rather than binding authority, as a practical matter it may often be determinative of a present judicial decision. If an earlier decision was a normally respectable one, and if circumstances have not significantly changed since then, a court or a judicial system will naturally tend to reach consistently the same results in similar cases. Although an isolated decision may be weakly persuasive, the doctrine of *jurisprudence constante*, where a number of earlier judicial decisions all reached the same result, permits reference to them as authoritative bases for a present decision. Analogously, an American court, however untrammelled may be its freedom to interpret legislation, cannot arbitrarily ignore the plain linguistic meaning of codes and other statutes. True, instances can be cited of tortuous decisions wherein what appeared clearly as "black" in legislative text issued as "white" after its subjection to judicial ministrations, and courts may be accused of unnaturally "legislating." But far more routine are instances where an American court cites plain statutory language as constraining its decision, even where it finds it unpalatable as a matter of justice.

The foregoing discussion describing a primacy of codes compared to legislation generally also suggests a preeminence of the French Civil Code within the already exalted legislative company of French codes, as a sort of *crème de la crème* or *primus inter pares*. This relates in part to the gradations of codes in terms of scope and of nature of subject-matter.

While the Civil Code enjoys the prestige of brief seniority over all other French codes, it is only one of five *grands codes* that were created under Napoleon in a coordinated program of codification. The others were codes respectively of civil procedure, criminal law, criminal procedure and commerce. There are in addition many other French codes, often referred to collectively as *petits codes*, samples of whose

subject-matter are labor, forests and rivers, mines, nationality, social security, enterprises and highways. Especially with regard to codes of the narrowest subject-matter, it seems to be a question of legislative style and discretionary choice as to whether an enactment should be called a code rather than be an ordinary "particular law." But the five earliest codes are referred to as *grands* because they deal with the broadest and most basic fields of the law, and not necessarily because they are the most voluminous. And because they deal with the most fundamental aspects of the law it was normal that attention was first given to them. And within this elite group of five, the Civil Code has primacy because the law with which it deals is the most essential and extensive of all.

The Civil Code is involved with what is classified as "private" as opposed to "public" law—the two basic categories of the whole world of the civil law, which are not truly found in the same sense in Anglo-American law, despite the familiarity of the terms. Despite its involvement with the public interests of the state, criminal law is categorized with private law for certain purposes. The whole Romanizing movement in the history of continental law dealt essentially with private law, emphasizing the rights and obligations flowing between individuals. The parts of the private law embraced in the Civil Code were those that had evolved most particularly through this historical development, were of the most fundamental and pervasive character, and the most susceptible of application in any society, thus also responding to the enduring ideal of unity of the law.

This rooting of the Civil Code particularly in legal historical evolution is an important factor in its quality and stability. The otherwise highly competent drafters of it were guided by the tested legal experience of centuries rather than by their own *a priori* reasoning, however brilliant, or by parochial particularisms or transient burning contemporary enthusiasms—even though the latter were, in the event, the cataclysm of the French Revolution and Napoleon.

The longevity and wide dissemination of the French Civil Code indicate that sound choices were made as to what should originally be included in it. Such choices are discretionary and are not automatically dictated by the nature of things. Although the Civil Code can be amended as freely as any other legislation, if it is to serve effectively as a framework for ongoing development of the law, its original content must provide orientation and guidance. The Code was not designed to be a once-and-for-all proposition, and its amendment to respond to changing conditions was contemplated. Perhaps this is best illustrated by the subject of nationality, which originally appeared as a title of Book I on Persons. In 1927 the articles of this title were all abrogated and the whole subject was recast as an independent code of French nationality. But despite many changes and amendments, the original structure and choices of subject-matter of the Civil Code were such as to discharge well its function of providing a framework for the arrangement of future legal developments.

Of course, all French law is not to be found in legislation. Complete investigation of a given point in French law involves, much the same as in American law, consultation of legal writing (*doctrine*), judicial decisions, administrative regulations, and particular practices and customs. Nor is all French legislation to be found in some code or other. Nor do the codes necessarily cover the totality of legislation applicable to their subject-matter. Thus the Civil Code, however effective as a point of departure, does not guarantee to be the totality of legislation on the various subjects with which it deals. In places it expressly refers to other codes or particular laws and incorporates by reference their provisions as the rules governing a designated situation. Or it may generally state that supplementary legislation on a matter will be found in par-

ticular laws or elsewhere. Nor can the legal researcher rely on the Code as always being so helpful in the way of express references or broad hints. As part of his craft, he must scan legislation generally to determine on his own judgment whether other statutes may also bear on the problem at hand, in the absence of formal references between them and the Code. And although such statutes as may be found are presumably harmonious with the Code, there is no guaranty that French legislators, like their counterparts elsewhere, will never make inconsistent laws.

It may seem curious, particularly to Americans, that the French Civil Code has continued on the seemingly even tenor of its ways despite wide oscillations of French governmental régimes. The Code has existed uninterruptedly through one directorate, two imperial (Bonaparte) monarchies, two royal monarchies, and four republics, not counting provisional governmental arrangements around the times of 1870 and of the Second World War. One way of explaining this is to describe the Civil Code as a kind of legal machine having a wide tolerance as to the politics of the régime under which it can operate, and represents only very bland and general ideological assumptions. The ideologies represented by these succeeding French régimes, despite their mutual antagonisms and sometimes extreme rhetoric, never essentially departed from the "liberal bourgeois" concepts of modern western society upon which the Civil Code was originally based. Perhaps the German experience is even more striking in this regard, as none of the political upheavals in France seem as extreme as the Nazi hiatus across the Rhine. The highly respected German Civil Code became effective in 1900, and has ever since served as the basis of the ordering of affairs of private law in German society, regardless of the latter's catastrophic political and international experiences. The situation has been variable where communist régimes have become installed in countries of the civil law. But apart from the early Soviet experiment with "abolishing" law, in general it may be said that the incoming communist régimes have not categorically or abruptly abrogated the civil codes which they found in place, whatever might be the changes in legal system ultimately ensuing.

The foregoing also points to the high degree of compartmentalization in France and other countries between "legal" and "constitutional" matters which does not exist in American law. The United States is at least highly unusual in the degree in which it merges constitutional and legal issues. It has no separate judicial system or procedures designed specially for constitutional matters, and constitutional issues may be raised in litigation and handled by the regular judicial system in the same way as any non-constitutional legal issue. In this way the American Constitution becomes highly enmeshed with "legal" matters. Some countries of the world, such as England, have no formal concept of judicial competence over matters of constitutionality. Others have a court or as in France, a council, which is not considered part of the judicial system at all, and whose sole function is its exclusive jurisdiction over constitutional questions. Still others use their regular courts—and perhaps only their highest court—for deciding constitutional questions, but only through distinct procedures clearly segregated from ordinary litigation.

While no institutional common denominator is to be suggested between the French Civil Code and the American Constitution, they can be seen as each having a revered and venerable status in their respective countries. In age they are both of the same generation in historical perspective, the French Civil Code being junior by less than two decades. The American Constitution is the world's oldest, and its seniority increases as a next oldest constitution somewhere becomes replaced by a new one. In addition to the reverence which it receives internally, it enjoys great prestige and

code → like a constitution

influence internationally for the ideas which it represents or has produced, although the document itself has been too particular, and now too antiquated, to lend itself to exportation or copying. If passage of time necessarily tends to make it outmoded, by the same token its continuing effectiveness, with the escape valve of amendment, adds increasingly to its lustre. An occasional opinion expressed that it is high time that the United States had a modern constitution has not produced any perceptible movement toward replacing the hallowed one of 1787.

Similar considerations undoubtedly operate in tending to preserve the original French Civil Code. It has been extensively amended, but some sixty percent of its original articles remain intact without any change of text. Other important codes have been replaced by new ones, such as the Code of Criminal Procedure of 1958 and the Code of Civil Procedure of 1976. There are always suggestions that a new civil code would be in order. An important reorganization of the Civil Code was considered when a joint Franco-Italian code of obligations was in fact drafted prior to World War II, but it was never put into effect. Since that war there has been a commission on revision of the Civil Code, but without any present indications that a new Civil Code will soon issue from its activities. In any case, there is no suggestion of immortality about the French Civil Code. Undoubtedly the day will come, even absent any radical departure from the present legal system, when increasing obsolescence of the Code and the awkwardness of many amendments will overbalance the desirability of continuity with the Code as originally conceived in 1804. But there are no present concrete indications that any such day is in the offing.

IV. Organization and Style of the Code

The French Civil Code when created was composed of 2,281 articles. Of which 1,356 remain intact, never having been amended by any subsequent legislation. Most of the rest have been amended in some way, at least once, and in not a few cases a number of times. Such amendments range from being a mere republication of the old text, but under the authority of a new statute, to complete replacement of text. Amendment also includes additions to old texts otherwise left undisturbed. The remainder of the articles have all experienced abrogation, but some of those have been reinstated. Of these some have been abrogated anew, and a few articles have vascillated several times between abrogation and reinstatement. Reinstatement refers to revived usage of the article number for a text, but not restoration of old text. Also new articles have been added, and they, too, have of course been subject to subsequent amendment and abrogation. Also there are articles whose otherwise superseded text remains applicable in certain situations, nearly all of them having to do with property régimes for marriages contracted when the former text was in force, and this includes the entire former text of lengthy Title V of Book III. These legislative interventions in the Code were relatively rare in the nineteenth century, but since then they have been increasing at a generally accelerating rate. The following table reflects these gross statistics on the Code as of the present writing.

Summary of Treatment of Articles of the Code

Original articles of the Code	2,281
Remaining unchanged	1,358
Amended in any way, never abrogated	775
Once abrogated, presently reinstated	21
In present abrogation	129
Articles added, presently in force	201
Total of articles presently in force	2,355
Articles with former texts also in force in certain situations	215

Maintenance of the Code has meant that legislative changes have been fitted into the original organization of material. An abrogated article remains a numbered article of the Code, even though without any text, and stands ready for re-use (reinstatement) for new text appropriate to that place in the Code. Occasionally an entire subdivision remains in a state of abrogation in such fashion. Added as opposed to reinstated articles (although enacting statutes may refer to both as being "added" to the Code) are inserted in the subdivisions appropriate to their subject-matter. To preserve the numbering system such added articles take the number of the immediately preceding old article with a "-1" suffixed, and with "-2," "-3," etc., when a number of articles are added in succession. Such added articles are fully independent ones and are in no sense sub-articles of the preceding original article whose number they borrow. Thus the last numbered article of the Code continued to be 2281, giving rise to repeated inaccurate statements that the French Civil Code consists of 2,281 articles, ignoring the ebb and flow of additions and abrogations. In 1975 it so happened that the subject-matter of two added articles appropriately followed that of Article 2281, and they were given the numbers 2282 and 2283, there being no need to resort to the device of "-1" and "-2." Thus the significance for the Code of the number 2,281 has become only historical.

The Code is presented with many statutory citations, occurring mostly at the beginning of individual articles. These are annotations of the history of legislative interventions in the Code. Absence of citation (unless there is a master citation for an entire subdivision, in which case an asterisk is found with the article) indicates that there never was any legislative change of the article. An uncommented citation means that the article was amended in some way. Where legislation involved abrogation or reinstatement, it is so noted. A citation down in the body of the text of an article means that only that paragraph or part of the article was affected, often by way of addition to the text of the article. Where a same citation is applicable to all articles of a subdivision of any rank, a master citation is made at the heading of the subdivision and is not repeated with the individual articles. Attention is called to this both in the Analytical Summary and at the headings of the subdivisions involved, with asterisks at the affected articles themselves as reminders. Where an entire subdivision has been re-enacted it has sometimes been completely reorganized internally as well, so that the numbered articles no longer deal with the same subject-matter as formerly. This means that the legislative citations that had accumulated for a particular article number are no longer meaningful for it. Where this has occurred all the previous citations at the individual articles are collected together and listed at the heading of the subdivision, with no attribution any longer to particu-

lar articles. This is noted at the heading of the subdivisions affected, and is in addition to the master citations just discussed. Where an uncommented citation appears under the name of a subdivision it indicates a modification only of the entitlement of the subdivision.

Part of the early appeal of the French Civil Code was its reputation for having been well done linguistically, and couched in simple language avoiding unnecessary legal grandiloquence and turgidity. However well it may deserve such praise, it cannot escape from the limitations and necessities of legislative language. This means that it cannot pretend to the literary quality of a Voltaire or a Shakespeare nor reach the reader with the readiness of popular writing. French laymen, like their American counterparts, complain about the obfuscation of lawyers' jargon, and the Civil Code does not escape from being swept up in this condemnation. But at least it can be said that the French Civil Code is among the best of a class of writing that is genetically handicapped so far as winning popular acclaim for literary excellence is concerned.

The many amendments and insertions mean that there is a linguistic time dimension to the Code, stretching from 1804 to the present, in much the same way as is true with the English language, including its American variant, over such a span. While such evolution is far less evident in formal texts than in popular language, it is nevertheless present in both cases. Thus stylistic differences are observable between the unchanged articles and those having modern texts. The unchanged texts sometimes appear quaint and whimsical to a modern reader. In the matter of presentation and phraseology, it appears that the old texts do not follow the canon of legal draftsmanship that repetition of precisely the same thought or reference should be *in haec verba*. Indeed, it sometimes seems that the draftsman strained deliberately to vary his language when he obviously wished to express precisely the same thing that he had already said, suggesting that he was following a stylistic canon that favored such variations. The modern parts of the Code normally do make verbatim repetitions in such situations. Sometimes archaic words and expressions no longer in common use have acquired a fixed meaning in legal contexts, and they may continue to appear in contemporary texts. Although modern texts generally reflect modern linguistic usages, some tendency to remain with slightly archaic but still familiar statutory language is discernible.

The linguistic style of the Code in terms of tone or mood is predominantly descriptive or narrative rather than directive or imperative. The reverse is generally true of the style of American legislation. There are rather few words or expressions in the Code that are peculiarly legal or that depart from general language. Its peculiarly legalistic qualities appear more as intricate and interrelated passages which are inevitable in the structuring of legislative language, however much it is deliberately attempted to "humanize" it. But generally the style of the French Civil Code is simpler and less legalistic than comparable American texts.

The articles vary in length from a line to a normal printed page or so. The most significant articles in terms of substance tend to be among the shortest. These are the ones that announce broad general principles of law. They provide the orientation for organizing the substance of the Code, and are those of greatest interest in terms of the influence and spread of the Code outside of France itself. They tend to be grouped together at the beginning of a title or important subdivision, often under a subdivision of their own entitled "General Provisions." The lengthy and involved articles are usually those devoted to detailing, sometimes with minute precision, the application of the general principles given in preceding articles. Except as subdivi-

sion headings so indicate of themselves, the Code makes no formal distinction between articles of basic principles and those implementing them. The extent to which the Code proceeds from general principles to detailed applications varies greatly among the fields of law treated. Matters dealing with property rights, for example, tend to be pursued in great refinement of detail. On the other hand, the broad field of torts, or civil delicts (the Code does not use the standard expression *responsabilité civile* in this connection), is handled in one brief chapter consisting of five articles extending a very short way into specific development of the material. The nature of the subject-matter can suggest one or the other as being the preferable way of the Code's treating a given situation. It is part of the discretionary judgment as to what is best included or not in the Code, all things considered.

V. The Translation

The French have an expression, somber in this context, *traduire est trahir*—to translate is to betray. This suggests that the activity of translation has analogies to that of traitors, though hopefully its worst potential consequences are less serious. It might even be said that translation involves double treachery. The exact meaning with nuances of the language from which the translating is done can never be entirely reproduced in the other language, and at the same time there is always the risk that the effort will deform the language into which the translation is made. In plotting a course between the Scilla of inaccuracy and the Charybdis of literalness, the translator must determine to court the risks of the one more than the other as being less dangerous accordingly as the nature and purpose of the particular translation suggests.

Where the purpose of the translation is to express only the essential idea presented in the original language, there is greatest freedom of use of the second language. Popular works, such as a play or a novel, probably represent the extremes of that kind of translation, and indeed, may properly depart so far from the original as to be "versions," as distinguished from translations, in the second language. Translations of the press from one language to another are still quite free, but more exacting as to adherence to the form used by the original language. Accuracy to the original generally takes priority over literary considerations in the second language where precision is highly important, such as in academic, official and legal matters. Translation of legislation, as here, is certainly among the situations most exigently requiring close adherence to the original language. When hard choices must be made the English language may seem to come off second best in terms of its most natural and expectable usages. Nevertheless, pursuit of accuracy can never properly use literalness to the point of producing incorrect English in terms of grammar or of idiomatic deformations which are ludicrous or unreasonably difficult of comprehension.

The translation seeks to reproduce in English words as far as possible the same form of thought and expression as is presented to a Frenchman when reading the original. It may happen that the French manner of expressing an idea, particularly a legal notion, is directly transposable into proper English, but is not the most usual or expected way that it would be expressed in English as an original proposition. The translation in such situations follows the French style of presentation. It is designed, so to speak, to slip the English language like a kid glove on the hand of the French Civil Code, so that the fingers of the hand so gloved can still function with a minimum of detraction from their natural agility. It is not an attempt to reproduce

the substance of this French legislation as though it had been enacted by an American legislature.

To attempt the latter would be self-defeating and impossible. If the point is to approach French law as closely as possible, one must seek to approach the French manner of interpreting the text. To use familiar English usages and legalisms which are not expressed in parallel fashion in French would deflect the user into his own accustomed habits of interpretation and away from the French manner of interpretation being sought. Precise fidelity to the original text is nowhere more important than in legislation, where an entire solution can depend on the interpretation given to a particular word. Of course, for any important specific issue in French law turning upon the precise meaning of a text there is no substitute for dealing with the original itself, and no translation can do more than lead the user as closely as possible to such issue.

It would be impossible to reproduce the Code in the guise of American legislation where the Code deals with a subject upon which Americans never legislate. Even though the same subject-matter is usually legislated in both cases, it may be done in such different ways as to forbid the use of the style of the one as a translation, even "free," of the other. Probably the most significant example of this is the avoidance of using in translation the very familiar and important Anglo-American concept of "estate." "Estates of decedents" is a usual way of expressing the broad subject of the transmission of property from a decedent to those entitled to take. The same phenomenon appears in French law, but is known as "succession." Succession is a familiar enough English term in this context, but lacks the precision of "estates of decedents" as an expression of the legal concept, and is far less used, especially in a professional way. However, "estate" is a specific and technical device embracing a large number of dependent legal concepts, none of which are present in French law. The use of "estate" in such a situation would set the user on a false trail of looking for a legal entity with title in a fiduciary and other features which do not exist in French law, apart from a very limited exception. A translator, once embarked upon using "estate" and seeking to follow through on it, would soon paint himself into a corner or would be driven to writing fiction about French law in order to maintain consistency. Hence, the translation uses "succession" in order to orient the user towards the very different French approach to the subject. Also *patrimoine* is translated literally as "patrimony," despite the infrequency of the word in English, in situations where "estate" might readily suggest itself in a somewhat different way than just discussed, in order to dissociate the user from false interpretations intimated by "estate."

There are situations where the French text is readily translatable into ordinary English, but the legal idea itself has no English counterpart. This is the case where the French text enjoins on an actor the standard of conduct of "a good father of a family." This suggests a high standard of care and conscientiousness, such as American law imposes on trustees, bailees and others. But these are technically specific ideas in American law and involve a different attitude toward interpretation than is suggested by the French phrase. Even though the results may presumably be highly similar, they are not necessarily so. To translate this as "trustee" or the like could induce the user all too comfortably into error, and unnecessarily so, since the reference to the good father of a family, if initially surprising, is reasonably self-explanatory. However, the translation did yield to the "irresistible impulse" to translate *cour d'appel* as "court of appeal." Such translation of *appel* is accurate only in the general sense of resort from the level of first instance to a higher court. Some

neutral word such as "review" would be more accurate, but such nicety is rarely observed, and the seemingly automatic rendition as "appeal" nearly always is found in the relatively frequent instances when there is occasion to translate such a common legal term. But *appel*, where in the higher court reconsiders issues of fact, as well as to questioning of law, and may receive additional evidence on them, is a procedure unknown to Anglo-American law. Its judicial "appeal" is similar, though not identical, to what is known in French law as "cassation," which involves only issues of law.

This problem with the word *appel* is also representative of the difficulties encountered when English has no vocabulary to deal with the French text because the phenomenon involved simply does not exist in the anglophonic world. Thus, for example, the "court of grand first instance" as the translation for *tribunal de grande instance* is repeatedly encountered. The French divide the jurisdiction of first instance into upper and lower levels, and this English phrase is "coined" to refer to this upper level, something which the English language does not have occasion to express. It involves the same principle as when linguists point out that there is no way to say "nuclear physics" in the Apache language. Another such problem is presented by the non-criminal functions of the office of the prosecuting attorney, for which the French have the collective expression *ministère public*. The American prosecuting attorney also has non-criminal functions, though less extensively than his French counterpart, but there is no institutionalized expression in English as a general designation of them. A literal translation of "public ministry," whatever that might connote to the user, would not remotely relate in English to the idea expressed in French. On a basis of *faute de mieux* this problem has been handled by translating *ministère public* as "prosecuting attorney" with (*ministère public*) immediately following to indicate that the reference is to the non-criminal functions only of his office. In a few other instances gaps in English have prompted resort to this device. Occasionally English words appear in parentheses to indicate that they are not actual translations but are inserted to aid accuracy or comprehension.

A translation cannot at the same time function as an explanation. However, part of the purpose of the Glossary is to explain French legal terms which do not lend themselves readily to translation. Also, accuracy forbids that there should be any editing of the Code under the guise of translation. Should the translator sometimes presume to feel that the original French could have been better expressed or phrased, he should refrain from a misconceived attempt to aid the French draftsman by producing English of an intended better quality than that of the French original. The well-meaning but unwary translator deliberately so exceeding his functions could never know when he is impinging on the delicate matter of interpretation of the text beyond what is unavoidable in the linguistic process of translation.

Any writing involves choices on the part of the author as between alternative ways of properly saying a particular thing. To a large extent this question of choices is the same in French as in English. Hence the translation attempts as far as possible to reproduce the linguistic choices made by the Code, whatever might be the preference were it an original proposition. Thus it follows the choices of vocabulary, phraseology and sentence structure to the extent permitted by acceptable usage in English. This may produce some results of the English being less common English than the corresponding French is common French. But where that is so, it is in keeping with the purpose of orienting the user toward a French idiom of interpretation and employing English usages which are most closely parallel to it. The above discussion of "succession" partly reflects this idea. The practice of close adherence to

the original is also intended to aid the user whose purpose involves making comparisons between the translation and the original, so that the same text can be readily identified from the one to the other. But archaic French terms are generally not given in comparable English parallel unless it appears necessary or does not interfere with comprehension.

The English language is far from monolithic, and translation into it requires a choice of the particular kind of English to be used. As is obvious and already stated, it is here the American brand of English, although apart from some matters of spelling, there are few differences in linguistic usage in formal texts such as the Code. There are probably greater differences in legal terminology, and here general American usage is followed. As among varying American usages of legal terminology, those are employed which are considered to be the most generic in meaning or to have the most widespread use. Thus, for example, "prosecuting attorney," as generically describing this function, is used in preference to other familiar but more particular expressions such as "state's attorney" or "district attorney."

Technical American legal terminology is used where it accurately captures the meaning of the French text, even where the latter was expressed in ordinary language. It has been noted that French legal terminology distinct from general language is less extensive than is the case with Americans. American legal terms usually cannot be expressed, as distinguished from explained, in ordinary language. Hence, ordinary French sometimes appears in translation as a technical legal term. This is particularly evident in the use of Latinisms. French legal language makes far less use of Latin than does American, and there are not more than one or two instances in the entire Code where a Latin word appears. But there are instances where the normal or best American usage is Latin rather than English, and it may be the only way that Americans have of expressing the idea. Thus the French in some instances is translated into Latin, and none of the Latinisms found in the translation appear in the French original. These Latinisms are considered to be such familiar American usage that they do not need to be italicized as foreign words. Examples of this are *res judicata*, *inter vivos*, *per capita*. Thus, the French legal expression *chose jugée* literally means "thing judged," but so to render it in English is at best an odd kind of English with a dubious meaning and not nearly so clear and familiar to an American lawyer as "*res judicata*," which accurately conveys the French meaning.

The translation avoids using esoteric American legal terminology, and it is not expected that a professional user would normally need to consult a legal dictionary. There are English-speaking jurisdictions of the civil law system which have developed a legal vocabulary in English, notably Scotland, Louisiana and South Africa. It might be thought that it could be profitably used for a translation such as this. However, the translation is addressed to English-speaking lawyers of Anglo-American legal background, and for them such expressions, even though formally a part of the English language, would be esoteric and hardly less foreign than the original French itself. Thus, while a Scottish or Louisiana lawyer might comfortably read *hypothèque* translated as "hypothec" or "hypothecation," this would not expectably be true of his English-speaking colleagues elsewhere, for whom it seems more helpful to translate as "mortgage," with the contextual understanding that it is limited to realty.

Although English is not classified with French as a Romance language, there is a great deal in common between them which preoccupation with their differences may tend to obscure. They share common origins to a large degree, and there have been many centuries of dynamic interaction between them. Quantitatively, the bulk of the text of the French Civil Code translates readily into English without serious linguistic problems.

GLOSSARY

These French expressions appearing in the Civil Code have been selected for this Glossary because in various ways they present problems beyond those of ordinary translation. Only these special meanings and explanations are given, and not the general or normal meanings which many of these terms have as well.

A

absent	missing person; absent or non-present in the sense of being lost.
accouchement	childbirth, confinement, delivery.
accroissement	accretion to property; in successions, adding lapsed inheritances and legacies to the shares of co-heirs or co-legatees.
acquêt	acquest, acquisition by and for the matrimonial community.
acquis (droit)	vested in the context of a right or interest.
acte	any of a variety of instruments of legal effect, depending on context, such as deed, certificate, attestation, record, and in plural may refer to minutes or proceedings of an organizational meeting.
actif	assets as opposed to liabilities (<i>passif</i>).
adjudicataire	contracting party; successful bidder at an auction.
adjudication	auction.
afflictif	corporal punishment, including imprisonment, suggesting disgrace.
aléatoire	aleatory, uncertain or gambling, especially as applied to a kind of contract.
allié	connection or relative other than by blood, as through marriage or adoption.
ameublissement	conversion of real property into joint ownership, as in a régime of community property, whereby it may be treated under rules applicable to personalty.
ancien combattant	war veteran, former combattant.
antichrèse	pledge or lien on the produce of realty.

appel	recourse to an appellate court from one of first instance, wherein the appellate court reconsiders questions of fact or takes further evidence on them, in addition to questions of law.
appelé	second legatee taking by entail through a first legatee.
arrêté	order or decree.
arrondissement	primary administrative subdivision under a department.
assignation	summons, writ, subpoena.
attribution	allotment, in context of successions, referring to the particular part of a succession to which a taker thereunder is entitled.
auteur	author, actor; also general expression for an originator or predecessor in a right or activity, and may in context mean, for example, assignor or decedent.
avocat	practicing lawyer and presently active member of the bar entitled to represent clients in litigation.
avoué	a lawyer of increasingly smaller numbers and scope of functions who now chiefly, upon official appointment formulates pleadings only at appellate courts and does not appear at trials; also, in a different context, a party avowing or ratifying.
ayant-cause	assignee, assign, etc.
ayant-droit	titleholder or possessor of a right.

B

bénéfice de discussion	judicial seizure for sale by creditors or guarantors of a debtor.
bénéfice d'inventaire	an heir accepting to succeed only under benefit of inventory takes from net assets of the succession which inventory shows to exist and does not assume responsibility for debts of the succession.
bien-fondé	merits, especially of a claim in litigation.
bien propre	severalty property in matrimonial régimes.

biens	property in general, especially in a physical sense, goods, assets.
bon père de famille	"good father of a family," a standard phrase to indicate a high quality of conduct required of an actor in situations of a fiduciary nature or analogous thereto.
bonnes moeurs	morality, proper conduct.
brevet	patent; original of a document, implying no copy or recording of it.

C

canton	primary administrative subdivision under an arrondissement.
cas fortuit	fortuitous event or "unavoidable accident," sometimes including act of God.
cassation	recourse to a higher court for error of law, similar to American appeal.
casuel	contingent.
cause	causa, an element essential to the enforceability of a contract consisting of an adequately serious "cause" or reason for a person to have obligated himself contractually; parallel in function to "consideration" in Anglo-American contracts, and often similar in factual bases, it is without the formal concept of reciprocal exchange of benefit and detriment.
caution	surety (person) or security (assets) or suretyship (especially when expressed as <i>cautionnement</i>).
chambre de conseil	judicial chambers.
chief lieu	city or town where the governmental seat of an administrative subdivision is located.
cheptel	live stock, cattle; in context, lease of live stock.
chose jugée	res judicata.
colon paritaire	crop farming tenant, paying rent in farm produce, may be a sharecropper.
commencement de preuve	prima facie evidence.
commerce	a technical reference to designate things or matters which are classified under and regulated by commercial law rather than the Civil Code.

commodat	gratuitous, in context of a loan made without compensation being due to the lender therefor.
commune renommée	common repute, knowledge or reputation.
compensation	extinguishment or extinction as applied to debts, which become "extinguished" to the extent that two parties are mutually indebted to each other in the same manner.
compromettre	to make an arbitration agreement.
compromis	arbitration agreement.
conclusion	motion in pleadings.
confusion	merger, commingling.
connaissance de cause	full knowledge of the facts.
conseil de famille	a family council exists whenever there is a guardianship for a legally incapacitated person, including a minor who is under no parental authority by reason of the parents' death or otherwise; the family council is appointed by the judge of guardianships, who presides over it, and consists of four to six persons, as closely related as possible to the incapacitated person and one of whom is designated surrogate guardian, and has legal authority and duties relating to the guardianship, the guardian not being a member of the council.
Conseil d'Etat	the highest tribunal in matters of administrative law, having both judicial and administrative functions.
consignation	consignment in the sense of deposit with a third-party stakeholder of a thing owed thereby discharging a debtor, somewhat analogous to escrow or paying into court.
contenance	content, extent, quantity.
contribution	tax.
convention	contractual agreement or "convention" in that sense.
cour	court of appellate jurisdiction.
créancier	creditor, including in the sense of a promisee or obligee of a contractual undertaking.
curatelle	partial guardianship for persons showing irresponsible tendencies in their affairs and relationships, but

curateur	not to the point of legal incompetency. partial or special guardian appointed for limited purposes of a <i>curatelle</i> or, similar to a guardian ad litem, for a particular event or transaction.
D	
débat	trial, hearing.
débiteur	debtor, including in the sense of a promisor or obligor in a contractual undertaking.
de cujus (Latin)	decedent in the context of successions.
de plein droit	as of right, by operation of law.
délit	delict, may be either criminal or civil; when civil, it implies an intentional tort, unless specified as <i>quasi-délit</i> , which implies negligence or lack of intention.
demande	complaint, declaration or petition in pleadings, or a claim, request or demand generally.
demande reconventionnelle	counter-action, counterclaim.
département	primary administrative subdivision of France.
dépôt	deposit, bailment.
destination du père de famille	arrangement made by owners of contiguous properties regarding their common usage.
diligence	behest, first motion among litigants, diligence.
discussion	investigation of assets, credit inquiry.
dispositif	the part of a judgment making disposition of the matter in controversy.
droit civil	civic or legal right, civil right, or the civil law referring to legal system.
E	
échéance	lapse, forfeiture, failure.
éducation	upbringing or raising, including but not limited to the sense of schooling, depending on context.
effets	securities, assets, values, effects, etc.
emploi	employment of assets in the sense of investing or profitably utilizing them.

enfant naturel	illegitimate child.
en nature	in kind, in specie, specific (as in "performance").
équité	equity in the sense of equitable attitudes or natural justice and not the institution of "equity" in English law (except when used to translate that into French).
état	the state; status, state or condition; list, inventory, schedule, account, etc.
état civil	civil status, with supplementary incidents, of being born, married or not, and dead, or the system of keeping the registries of civil status.
éviction	dispossession in general, not limited to real property.
expédition	copy, sent elsewhere than where the original document is kept.
exploit	writ, process, summons, execution.

F

ferme	farm, farm lease.
fin de non recevoir	plea in bar.
foi	faith; with <i>faire</i> , to prove or to be authentic.
fond	substance, as in "substance and form."
fond, fonds	assets, funds, land, etc., in material senses depending on context; grounds or bases of reasoning in abstract senses.
fondé de procuration	agency, proxy.
fonds de commerce	business assets, goodwill.
force majeure	overpowering force, act of God, vis major.
forme	procedure, proceedings.
fruit	fruit in the figurative sense of gain produced by property of itself, such as crops and the increase of animals and rent and interest, excluding generally increase in value and profits from commercial operations such as, for example manufacturing.

G

gage	gage meaning personal property pledged as security.
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Garde de Sceau	Guardian or Warden of the Seal, a title of the French Minister of Justice.
gestion d'affaire	benefit conferred without prior request or agreement, creating an issue in the nature of quasi-contract.
gré à gré	by private or mutual contract.
greffe	record office, with judicial connotations particularly.
greffier	clerk of the court.
grevé	impressed, burdened, entailed.

H

hors part	"outside of share," with reference to successions, whereby an <i>inter vivos</i> gift or a legacy to an heir is given without being counted against his share in the succession otherwise.
huissier	judicial functionary, similar to a bailiff.
hypothèque	mortgage on real property.

I

immeuble	general expression for realty or real or immovable property; a building, particularly an apartment building.
immeuble par destination	chattel for exploiting a farm, considered part of the realty.
indivis	undivided or joint, especially with regard to ownership.
indu	anything which was "not due," but had been paid nevertheless through any kind of wrong or error, for which a right of restitution exists.
inscription	recording or registration.
instance	litigation; with reference to a court, a trial court or court of first instance, of which in France there are lower (<i>tribunal d'instance</i>) and upper (<i>tribunal de grande instance</i>) levels.
institution	appointment as applied to matters of successions, as appointment of an heir or power of appointment.
instruction, instruire	judicial or official investigation; the <i>juge d'instruction</i> is an investigating judge in more serious criminal matters above the prosecuting attorney's investigation, a judicial function not known in American law.

interdire, interdit to deprive judicially of legal capacity, the person so deprived.

J

juriste general expression for lawyer, including all those who use their legal education in some capacity, whether or not related to the "practice" of law; the vast majority of *juristes* are not members of the bar, and for those who are the specific designation of *avocat* is used.

justice (en) "at" or "by" law, in the sense of through judicial or court procedures.

L

légal by operation of law.

lésion injury or wrong in general, and with particular regard to contracts, a failure to receive full or proper *quid pro quo*.

licitation auction sale of jointly owned property.

loi law in the sense of legislation and as distinguished from law in general (*droit*) or any other kind of law.

M

maison de prêts sur gage pawnshop.

maître master; owner or contracting party for whom work is done by a contractor; title and form of personal address of a practicing member of the bar (*avocat*).

mandant principal of an agent.

mandat agency in the sense of authority or power conferred by a principal.

mandataire agent for a principal.

marc le franc (au) pro rata.

metropole France as distinguished from overseas French territories; any mother country of colonies.

mettre en demeure to put on notice, summon, to do a duty on pain of consequences.

meuble general expression for personalty or personal or movable property, as noun or adjective.

meubles meublants furniture, furnishings (household, etc.).

ministère public the non-criminal functions of the office of the French prosecuting attorney; translated as "prosecuting attorney (*ministère public*)" to distinguish from *procureur* translated as "prosecuting attorney" generally or not specifying non-criminal functions.

minute record of a transaction or document, minutes of a meeting or proceeding.

mitoyen quality of party-right, as in party-wall, party-ditch, etc.

motivé reasoned or explained as applied to a decision, especially judicial.

mutation transfer and its synonyms in particular contexts.

N

naturel illegitimate, most commonly in the sense of a "natural child."

notaire notary, a public lawyer to whom interested parties present themselves for the creation of documents requiring his official authentication, such as deeds, the effecting of successions, matters of matrimonial régimes, and others; the notary draws up the document according to law as the situation is presented by the parties, who may or may not be represented by legal counsel before him; the notary does not represent any of possibly opposing interests, and cannot act if the parties are not in agreement; the function of the notary (not to be confused with an American "notary public") is unknown in the adversary American system, but in effect, although not as such an *avocat*, he accomplishes tasks of the practising attorney under the American legal system.

notoriété (acte de) affidavit or the like carrying a notary's authentication.

nullité invalidity, nullity.

O

objet	object, objective, thing, subject.
office (d')	ex officio, on own motion, automatically
onéreux (à titre)	for valuable consideration
opposition	objection, garnishment.
ordre	rank or priority.
ordre public	public policy, law and order.

P

paraphernal	paraphernal, in a dotal marriage régime, refers to all the wife's property outside the dowry.
par provision	pending appeal, provisionally.
passif	liabilities as opposed to assets (<i>actif</i>).
patrimoine	patrimony, meaning a collective expression for the totality of a person's property and assets.
pension alimentaire	support or subsistence maintenance, alimony.
péremption	nonsuit or lapsing of a court case.
personne morale	a fictitious or legal person or entity other than a natural person, e.g., a corporation.
plus-value	appreciation, increment or addition to value.
potestative	depending on the will of one or another of contracting parties.
préciput	preciput, or preference legacy to an heir which he receives without diminution of his participation in the succession, which does not include the preciput.
préfet	prefect, the chief officer or executive of a French department.
preneur	taker in any of various senses, such as buyer, lessee, vendee, heir, etc.
prêt à grosse aventure	bottomry bond or respondentia (maritime law, whereby the lender on the security of a ship or cargo loses the same if they are destroyed during the voyage or period covered).
privilege	priority, as among creditors.
prix	price, also in a general sense of value, consideration, amount, etc.
procès-verbal	a written report of statements or proceedings, often in connection

procureur	with matters of police investigation and interrogation. prosecuting attorney, district attorney, etc.; procurator.
propriété	ownership; property in a figurative sense.
provision	temporary or maintenance allowance.
puissance paternelle	paternal authority, sometimes parental authority in general.
pupille	ward.
pur et simple	unconditional, pure and simple, especially in connection the acceptance of an inheritance with responsibility for debts of the succession, as opposed to acceptance under "benefit of inventory."

Q

quodité disponible	that part of a decedent's assets of which he may dispose by gift or testament.
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R

radiation	cancellation, striking off, sending away in the sense of expelling.
rapport	hotchpot, in context of successions, whereby an heir having received a gift or a legacy from the decedent "reports" it or its value to the succession in which it is computed to be divided along with the rest of the succession.
recommandée	registered, as applied to mail.
référé	judicial order of urgency, injunction; judicial chambers and matters decided therein.
répétition	claiming back, renewal, repetition.
reprises	retakings, specifically wife's right to reclaim her individual property upon dissolution of a marriage, including by death.
réservataire	indefeasible as applied to an heir, with reference to the "reserve" of a succession of which the testator cannot dispose.
réserve	in context of inheritance, that part of a succession to which there is an

	indefeasible right of inheritance and of which the decedent cannot dispose.
résolution	rescission, cancellation and the like of an agreement (<i>résolutoire</i> in adjective form).
responsabilité civile	torts in the sense of a field of law.
ruine	ruin, as applied to a building or structure meaning its collapse and the like from internal causes.
S	
saisi, tier saisi	garnishee.
saisie-arrêt	attachment, garnishment.
saisine	seisin in the sense of feudal law, but this notion of being "seized" is also generally used to mean any coming into possession, ownership, authority or jurisdiction, depending on context.
séance tenante	forthwith.
séparation du corps	judicial separation (separation from the body or bodily separation) where spouses are dispensed from the legal duty of co-habitation.
services fonciers	land or realty services, those being due as a condition of owning or occupying land, originating as a feudal concept.
signification	service of process, notification.
simple	single, unilateral, simplified, simple.
société	any of various legal collectivities and enterprises (whether or not "incorporated" in an American sense), including corporations and partnerships of any kind and non-profit organizations.
solidairement	in solido, jointly and severally with respect to liability.
succession	the principle of succession is that the decedent's property passes immediately upon death to those entitled in accordance with the situation disclosed as to inheritance and testamentary dispositions without passing through the intermediary of an "estate;" courts are involved only in the event of adversary litigation, and

survenance	otherwise matters of succession are settled before notaries. subsequent or unexpected birth, afterbirth.
T	
taille	tallage, an archaic usage referring to an old general tax, the amount of which a person paid as reflected by receipts was considered indicative of his wealth generally.
tierce opposition	third party opposition.
titre	general expression for title or entitlement, including in context the deed or document proving the title.
titre a porteur	bearer security.
titre nominatif	registered security, as with shares of stock.
titre onéreux	valuable consideration, for value.
titre universel (à)	refers to a residuary inheritor or taker, often as distinguished from one who is "sole" or "universal."
transaction	compromise settlement or composition.
tribunal	court of original or trial jurisdiction, of first instance.
tuteur	guardian; in occasional context may designate a different kind of fiduciary.
U	
universel	in successions, a sole or "universal" heir or taker, especially as distinguished from residuary (à titre universel).
vain	common.
valeur vénale	market value.
valeurs mobilières	personal property, securities.
viagère	for life.
ventilation	separate valuation.
vice	error, especially judicial error of law or procedure (<i>forme</i>).
viril	lawful, with respect to a share or portion in a succession.
voies de fait	acts of violence, especially battery.
voiturier public	common carrier (enterprise).

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