I would be in bad faith, and indeed knavish (to use the 1808 translation of "mauvaise foi"), if I were to assert that Louisiana's case is certain. Although it is styled a "brief," this Article is of course an exercise in historical research. Overstatement is a mistake in historical work, which is always uncertain. Part of the controversy over the sources of the 1808 Code is rooted in the inherent problems of historical research. There can be no guarantee that the past, be it the couple of hundred years of Louisiana legal history or the several thousand years of Roman legal history, will be understood with perfect accuracy. All that honest historical work can offer is honesty, and one might hope for some intelligence. In short, responsible history can only make an honest case.

This Article makes the case that the Louisiana law of possession for the most part follows the Roman law. The Article further emphasizes that the redactors did not depend only on later sources, such as the Siete Partidas or French commentators, for their knowledge and use of the Roman law. The nearly verbatim reproduction of Roman provisions in the Code of 1808 shows this, particularly when compared with the variance of the Siete Partidas and other possible intermediate sources. The case is further strengthened because the early Louisiana law also followed general Roman methodology and doctrine. Louisiana need not take through Spain or France, at least insofar as the possession articles are concerned. For the foregoing reasons, Louisiana should be recognized as a direct successor to the Roman legacy.

Several years ago, the distinguished legal scholar Francis de Zulueta stated that as students, professors, or practitioners of the law we are all—civilians and commoners alike—the "heredes
Soviet stepped into the shoes of the master. The slave could not reject his inheritance, even if he wanted to. This appointment could occur even where the testator was bankrupt, in which case it was called hereditas damnosa. If the bankrupt testator had no heirs, he could designate one of his slaves as heir, who would then be saddled with the obligations of his master at the master’s death. This appointment satisfied the Roman belief that there had to be universal succession.

Professor de Zulueta’s sentiment is clear: Like it or not we are stuck with our Roman-inheritance. The influence of Roman law on the civil law has never seriously been doubted. Recent scholarship has turned up similar evidence with respect to the common law. Roman law seems to have contributed to the development of the common law during both its formative period in England and its maturation in the United States. “It is this peculiar ability of the Roman law of living in symbiosis (union) with diverse legal organisms that has promoted its functioning as the medium of legal science.”

Since we have no choice as to our inheritance, and cannot escape its influence, we should not seek to ignore its present value and importance. A course in Roman law offers enormous benefits to civil- and common-law students alike. As civil-law students have traditionally been required to study Roman law, we will not focus on them here. This Essay will outline the value of a Roman-law course to common-law students, who are rarely even given the opportunity to study Roman law. I will then propose how such a course should be taught.

At the outset it must be admitted that Roman law is not a prerequisite for finding a good job or for succeeding in legal practice for either common- or civil-law students. It is also true, however, that “[w]e conceive of the value of knowledge as based upon its utility for the acquisition of wealth or material success is to completely overlook the chief purpose in all education—namely, the development of character as well as intellect.”

3. Id. at 485.
5. Roman law developed over roughly one thousand years (510 B.C.-530 A.D.) in a basically uncodified form. See id. at 2-14, 39-42. In this respect, it developed in much the same way as the common law. In 533 A.D., the Emperor Justinian promulgated his famous legislation, the Corpus Juris Civilis, which codified pre-existing Roman law. Id. at 39-42. The Corpus Juris consisted of four parts: the Digest, a compilation of the opinions of the Roman jurists; the Code, a compilation of imperial decrees; the Novels, Justinian’s own decrees; and the Institutes, a basic text book for law students. See id.
6. See, for example, the articles appearing in this symposium by Professors Helmholz, Herman, and Dean Hoeflich.

As early as 1950, one scholar noted: “[T]here is more of Roman law [in American common law] than the ordinary American lawyer realizes, for most of the basic principles in our law of admiralty, wills, successions, obligations, estates, liens, mortgages, adverse possession, corporations, judgments, and evidence come from either the survival or the revival of Roman law in English law.” Coleman-Norton, supra note 5, at 476.
8. Rabel, supra note 5, at 7.
9. A survey conducted by the Author found only seven American law schools that offer a course in Roman law: Boalt Hall, U.C. Berkeley; the University of Chicago, Harvard; the University of Michigan; Syracuse; Tulane; and the University of Virginia.
II. THE VALUE OF ROMAN LAW TO AMERICAN LAW STUDENTS

A. Intellectual Value

Roman law's greatest benefit to the student is its intellectual vigor. From Roman times to the present, the study of Roman law has attracted some of the world's greatest jurists. From Roman times to the present, the study of Roman law has been broad enough to be used in extremely different cultures over the last 2,000 years.

B. The Juristic Method

As one scholar has noted, "[t]he long has been admitted on all sides that the Romans had a genius for law and that their development of legal principles in government constitutes their chief historic significance for all time." The Romans excelled at the study of law because it fit the Roman national psyche. Above all things, the Romans valued continuity, reason, and order. The method of expression—divining legal rules through reason and order. Jurisprudence—flowed naturally, therefore, from the Romans' ordered culture.

In addition, the Roman jurists' adeptness at defining the proper level of abstraction for legal rules, balancing the general and the specific, has given Roman law its longevity. The Roman jurists developed legal rules that have been broad enough to be applied in extremely different cultures over the last 2,000 years, yet the rules have been specific enough to adequately settle disputes between two parties. As one of the greatest Roman historians noted, the Romans "satisfied . . . two conflicting requirements, that law shall constantly be fixed, and that it shall constantly be in accordance with the spirit of the age." This excellent balance explains why Roman law was seen as ratio scripta (written reason) by writers in the late Middle Ages and similarly as a "great fountain of rational jurisprudence" by a nineteenth-century United States Supreme Court Justice.

11. The organization of this section will roughly follow the schema set out in Professor Sherman's article, see generally id.
14. See HANS J. WOLFF, ROMAN LAW: AN HISTORIC INTRODUCTION 183, 207 (1951). For more on Roman law during this period, see generally PAUL VINOGRADOFF, ROMAN LAW IN MEDIAEVAL EUROPE (1909).
15. JOSEPH STORY, GROWTH OF THE COMMERCIAL LAW, IN THE MISCELLANEOUS WRIT-
B. Ethical Value

The ethical value of Roman law may be doubted today. After all, Roman society contained many institutions that we now find repugnant: slavery, gladiators, mass executions, misogyny, and general excess. If, however, we can avoid sensationalizing history, judge the Romans in the context of their time, and look at the function of law in that society, there are ethical lessons to be learned.

First, Roman society actually was imbued with a heightened sense of morality, found in the stoic philosophy. Second, the function of law in society was to effect justice, similar to the English courts of equity. Ulpian, an early third-century jurist, described law and the legal profession as follows:

When a man means to give his attention to law (jus), he ought first to know whence the term jus is derived. Now jus is so called from justitia [justice]; in fact . . . jus is the art of what is good and fair. Of this art we may deservedly be called the priests; we cherish justice and profess the knowledge of what is good and fair, we separate what is fair from what is unfair, we discriminate between what is allowed and what is forbidden, we desire to make men good, not only by putting them in fear of penalties, but also by appealing to them through rewards, proceeding, if I am not mistaken, on a real and not a pretended philosophy.22

C. Historical Value

Just as a course in Western Civilization is required to obtain an undergraduate degree in almost any subject (business, science, literature, mathematics, etc.) at almost any college, so too should Roman law be required to obtain a law degree.24 The

reason is similar; it is necessary to know from whence you came to know where you are. The background knowledge that these courses provide allows the student to see influences and understand references in later, or even present, times. The English literature student could hardly understand Milton or Shakespeare without the basic knowledge of the Greeks and Romans offered in the introductory western civilization course. The political science student studying the drafters of the American Constitution could not truly understand the “founding fathers’” mindset without some knowledge of Roman history and the Greek and Roman political theorists who so heavily influenced the Constitutional Convention.25 A course in Roman law offers

22. On the ethical code of the Stoics, see E. Vernon Arnold, Roman Stoicism 330-56 (Routledge & Kegan Paul Ltd. 1958) (1911); Maxwell Staniforth, Introduction to Marcus Aurelius, Meditations 9-18 (Maxwell Staniforth trans., Penguin Books, 1964). For a “real life” application of the Stoic philosophy, a reading of the Meditations is unmatched. 23. Dig. 1.1.1.1. (footnote omitted). 24. The Author is well aware of the debate raging over “multicultural curriculum reform” and “political correctness.” The same radical “multiculturalists” who oppose the teaching of western civilization and the classics would probably oppose the teaching of Roman law. Persons with balanced perspectives (i.e., those who attack both extremes and believe that the core curriculum should be reformed, but not through scrapping everything “classic”—the Author’s position) will hopefully see the logic in offering a course in Roman
the modern American common-law student similar benefits. The lessons of history are learned by locating the origins of the institutions that are fundamental to society and seeing how and by what methods they have been changed over time. In Roman history we find the origin of most of our institutions. In general the detailed rules the modern American common-law student similar benefits. In institutions, such as marriage, property, and ing Roman times and throughout the history of the study of Roman law lies not in becoming acquainted with the institutions that are fundamental to society and seeing how and by what methods they have been changed over time. In section the

D. Comparative Value

The comparative value is perhaps the most "practical" value Roman law offers to the common-law student—a way in which Roman law is applicable to modern legal practice. Commentators have identified three purposes for comparative-law study: professional, cultural, and scientific.29 As the world rapidly shrinks in size due to advances in technology, the importance of comparative law in general, and each of these purposes in particular, grows at an equally rapid pace. The study of Roman law is an excellent introduction to the study of comparative law and fosters each of the three comparative-law purposes.30

The professional purpose of comparative law is defined as helping judges, lawyers, or legislators in one jurisdiction underst and the law in another jurisdiction.31 Roman law facilitates this purpose for common-law students by introducing them to the principles and history behind civil-law systems. This is not to suggest that if students are versed in Roman law, they are competent in every (or any) civil-law system. In fact, we must be very careful to avoid overstating of this type.32 A study of Roman law can, however, serve as an introduction, as a "key which unlocks the legal systems of modern continental Europe."33

The cultural purpose of comparative law seeks "to widen the perspectives of the students and to make it possible for them to better appreciate and function within their own legal system."34 Roman law can advance this purpose for both civil- and common-law students. For civil-law students, it serves as a background and history from which to judge their present system. For common-law students, it can serve as an introduction to the civil law, the world's other great legal system. The importance of this added cultural perspective cannot be emphasized enough, even if the student never practices outside of the common law.

Finally, the scientific purpose of comparative-law study is to compare the rules of two legal systems looking for what is best in each with an eye toward harmonization or unification.35 Roman law can help with this endeavor, as it has in the past, by serving as a neutral third choice between the modern civil law and the modern common law.36

The four "values" that Roman law offers to the modern common-law student mentioned in this Essay—Intellectual, Ethical, Historical, and Comparative—do not comprise an exhaustive list. Additional arguments could be made, but hopefully enough has been said to convey the importance of Roman law to today's law student. A description of how such a course should be taught and a short bibliography may be found in the appendix following this Essay.

31. GLENDON ET AL., supra note 29, at 3.
32. See generally Shael Herman, The Uses and Abuses of Roman Law Texts, 29 AM. J. COMP. L. 671 (1981) (arguing that authors should be careful not to assume that knowing Roman Law means that they are competent in modern civil law).
33. Sherman, supra note 10, at 201.
34. GLENDON ET AL., supra note 29, at 3.
35. Id.
36. See generally STEIN, supra note 27, at 122-27 (discussing the influence of Roman law on legal conceptions).
III. Conclusion

In conclusion, this is no "modest proposal," nor a plea for life from the gallows. It is more like the Apology of Socrates. Offering a course in Roman law is the right, logical thing to do. Refusing to offer a Roman-law course or accept it as legitimate is similar to the Athenians putting Socrates to death: a hasty, irrational act that in the end harms the students most of all. It is true that knowledge of Roman law is not required to become a practicing lawyer today, but it will produce better lawyers. The significance of Roman law "rests, as Sir Henry Maine reminded us, in 'the immensity of the ignorance to which we are condemned by ignorance of Roman Law.'"

JOHN J. HOGERTY II**

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1. In the "Swiftian" sense. See Jonathan Swift, A Modest Proposal for Preventing the Children of Ireland from Being a Burden to their Parents or Country, in SATIRES AND PERSONAL WRITINGS OF JONATHAN SWIFT (William A. Eddy ed., 1932) (the proposal is to eat the children).


4. The format is based on the original Roman-law textbook, the Institutes of Gaius, dating from about 161 A.D. See BARRY NICHOLAS, AN INTRODUCTION TO ROMAN LAW 36 (3d ed. 1962). Gaius divided the law into three areas: Persons, Things, and Actions; a division that has survived into the modern Roman-law texts and all civil-law systems. Id. at 60.

5. On Justinian's legislation and its importance, see note 5 in the Essay itself.

6. See generally NICHOLAS, supra note 1.

7. See note 7 in the Essay itself (especially the last paragraph).
B. Roman Substantive Law

1. Gaius' Institutes Updated
   a. "Persons"
   b. "Things"
   c. "Actions"

C. Bibliography of Recommended Books

1. Required Texts
   - BARRY NICHOLAS, AN INTRODUCTION TO ROMAN LAW (1962).

2. Advanced Textbooks
   - FRITZ SCHULZ, PRINCIPLES OF ROMAN LAW (Marguerite Wolff trans., 1936).
   - J.A.C. THOMAS, TEXTBOOK OF ROMAN LAW (1976).

3. Juristic Method
   - FRITZ SCHULZ, HISTORY OF ROMAN LEGAL SCIENCE (1946).

4. Legal Periods
   - FRITZ SCHULZ, CLASSICAL ROMAN LAW (1951).

5. This section would describe the family and its function in Roman society and beyond. Topics would include patria potestas and the ideas of marriage, legitimation, guardianship, and divorce, which have heavily influenced the common law. See NICHOLAS, supra note 1, at 60-97.

6. This section would center on property law, which is an excellent stage for comparing civil and common law. The idea of absolute ownership, the distinction between ownership and possession, the modes of acquiring possession, and rights in others' property (servitudes/easements) should all be discussed. See id. at 98-157.

7. This section would focus on obligations (contracts), delict (torts), and successions (trusts and estates). Each of these three areas provides topics that fit our objectives such as the relationship between societas and partnership, negotiorum gestio, unjust enrichment, and the possible connection between fideicommissa and trusts. See id. at 158-270.