French Civil Law System Since 1804

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This paper was first presented at the American Association of Law Libraries Civil Law Institute, held at McGill University, Montreal, between June 22d and 24th, 1977. Its topic is the development of French private law since the enactment of the Civil Code, in 1804, which marked the beginning of the modern legal system in France. The following topics are discussed:

1. The meaning of the expression "civil law."
2. The scope of the civil law.
3. The position of the Civil Code within the French legislative structure.
4. The judicial setting in which the Civil Code operates, i.e., the French courts system.
5. Interpretation of law by the courts.

This paper is based on the theses of several writers, a list of which appears on page 349 (Appendix A, Note 2). Citations from the text of the French Civil Code are taken from three different translations, details of which may also be found on page 349 of this report (Note 1, Appendix A).

In English-speaking countries, the terms "common law" and "civil law" are sometimes used to differentiate between two legal systems: one developed in England and the other in continental Europe respectively. In this context, the law of the United States or Canada is called "common law" and the law of France is called "civil law."

The term "civil law" may be confusing. It has a long history and its meaning has changed with time. In the beginning, civil law was the law of Quirites, that is, the law of the citizens of Ancient Rome (Jus Quiritium). Later the Romans developed another legal system comprising the rules common to all people (Jus Gentium) and used this law in their relations with aliens and foreign states. The Romans kept Jus Quiritium or the law of Ancient Rome as civil law peculiar to Roman citizens.

During the Middle Ages and indeed until the Napoleonic codification which began in 1804, the term "civil law" designated the Roman law of the sixth century as represented by Justinian's compilations. These compilations contained both public and private law of the Empire and were known as the Corpus Juris Civilis, i.e., the collective body of Roman law. They were promulgated between 528 and 534 A.D.

In the seventeenth century, Europe saw a revival of interest in Natural Law. Natural Law was considered to be the universal, ideal law of mankind, while civil law was the Roman law taught in the European universities and the law actually applied in the southern part of France. In the northern part of France the customary laws of Germanic origin were applied.

Modern French law began with the French Revolution of 1789 and the post-Revolutionary codification and especially with the promulgation of the

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Civil Code in 1804. Since then, one uniform national law has replaced the Roman law and all legislation of the Ancient Regime.

The expression "civil law" changed its meaning, again, to become synonymous with French private law as opposed to French public law. Although often used as equivalent to private law, it has a more specific meaning for the French jurist. The civil law is the law which is contained in the Civil Code. Some civil law jurisdictions, such as Quebec, for example, incorporate the Commercial Law into the Civil Code. Such is not the case in France, mainly for historical reasons.

The French jurist distinguishes between civil law and commercial law and categorizes them both as private law. Commercial law developed independently of civil law and consisted of merchant and maritime customs, which were quite similar throughout Europe. Commercial law was largely codified by an Ordinance in 1673. This was the first attempt at codification in France. The first commercial courts were called "tribunaux consulaires" and were renamed "tribunaux de commerce" during the French Revolution. They still function in France as the courts of first instance in disputes between businessmen. The procedure before the commercial courts is informal. The judges, elected among businessmen, are not required to have law degrees and do not receive salaries.

The Commercial Code was enacted in 1807, three years after the Civil Code. While the Civil Code regulates the basic legal institutions of interest to all citizens (law of contracts, sales, creditors' rights, etc.), the Commercial Code offers special rules concerning the acts of businessmen, such as commerce in general, commercial companies, maritime commerce, insolvency, bankruptcy and commercial courts. The commercial legislation differs from the Civil Code in order to favour and facilitate business life. It is important, then, to define who are businessmen. The definition given by Article 1 of the Commercial Code is "those who perform acts of commerce and make it their usual profession are businessmen." (They are previously called traders, then merchants.) The acts of commerce are those which are enumerated in Articles 632 and 633 of the Commercial Code. Examples: purchase of property for resale, operations relating to exchange, banking or brokerage.

We have now dealt with the definition of the civil law and the differentiation between the Commercial Code and the Civil Code. Let us now concentrate on the Civil Code exclusively.

The Civil Code has preserved its original arrangement which consisted of a Preliminary Title and three Books. The Books are divided into Titles, these again into the Chapters and the Chapters are often divided into Sections. The law is stated in separate Articles which are numbered. The original numbering of the Articles has been preserved. When enacted in 1804 the Code contained two thousand, two hundred and eighty-one Articles and only two separately numbered Articles; Art.2,282 and Art. 2,283, were added in 1975.

There are some empty or blank Articles where the provisions have been repealed and not replaced. If necessary, the Articles are extended: two examples are Art. 371 C.C., concerning parental authority, which extends from Art. 371-1 to Art. 371-4, and Art. 375 C.C., regulating the educative assistance to a minor which extends from Art. 375-1 to Art. 375-8.

1 "Art." refers to the Articles of the French Civil Code.
2 C.C. refers to the French Civil Code.
The French Codes are published by commercial companies. The last official edition of the Civil Code were published on August 30, 1816. The most popular commercial edition has been published annually since 1902 by the Jurisprudence Generale Dalloz (11, Rue Soufflot, 75240 Paris) in the series “Petits Codes Dalloz.” In this edition any special legislation not officially incorporated into the Civil Code is reprinted nevertheless in the relevant section, e.g., the text of the Code of Nationality is reprinted at the end of Section I of The Deprivation of Civil Rights by Loss of the Status of Frenchman, in Chapter II of Book One, entitled Of Persons.

Access to the “Petits Codes Dalloz” is possible through three tables:

1) Table of Contents
2) Chronological Table
3) Alphabetical Index

These tables refer the user to specific Articles which are printed along with amendments and complementary legislation, when applicable. The old text of recently revised Articles is often included. In addition, each Article of the Codes in the “Petits Codes Dalloz” series is annotated and references are provided to the relevant Articles within the same Code and to all other codes published by Dalloz. References are also provided to the relevant sections in all Dalloz’s legal research material and even, occasionally, to other leading legal publications.

The “Petits Codes Dalloz” are the most frequently used French law research tools, both as compilations of statutes and as a first step in legal research. They are kept up-to-date by special pages (green) which also appear in two other publications by Dalloz: the semimonthly Bulletin législatif Dalloz (cited B.L.D.) and the weekly Recueil de jurisprudence which constitutes one of the three main divisions of the Recueil Dalloz (cited D.), now known as the Recueil Dalloz Sirey. The other two main divisions of this Recueil are “Les chroniques” and “La Législation.” Jurists who wish daily updates to the codes may further consult the Journal officiel de la République française (called Journal officiel and cited J.O.).

There are, of course, other useful legal publications, which are described in the excellent bibliographies compiled by René David, Charles Szladits and Kate Wallach. These bibliographies are listed under the respective authors’ names in Appendix B, pages 350-353.

Contents of the Civil Code

The Preliminary Title of the Civil Code deals with the general principles of law. The arrangement of the Code is based on the logical postulate which requires deductive reasoning, from the general principles to the specific. Thus, first, the Code in its Preliminary Title regulates the “Publication, Effects and Application of Laws in General.” As “every right presupposes a subject and this subject can only be a person” (Gény, no. 65, p. 91),\(^2\) the Code treats “Of Persons” in the First Book. The objects of rights, that is, “Property and Different Types of Ownership” are dealt with in the Second Book. The “Different Modes of Acquiring Ownership” are regulated in the Third Book.

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\(^2\) For full reference, see page 349 Note 2, no. 7.
First Book

The First Book, "Of Persons," deals with rights of individuals. It begins with the topic "Of Enjoyment and Deprivation of Civil Rights," civil rights in this context being the private rights of French citizens and not their political rights and freedoms. (The Civil Code does not deal with human rights as these are governed by the constitutional and voting laws.) Because the Code so deals with the "rights of French citizens," the possession of French citizenship becomes a very important prerogative. The law of French nationality is not governed by the Civil Code, however, but by the Ordinance of October 19, 1945, as modified by subsequent legislation called Code de la nationalité française or Code of French Nationality. As for the rights of aliens, the Civil Code specifies in Article 11: "An alien shall enjoy in France the same civil rights as those which are or will be accorded to Frenchmen by the treaties of the nation to which this alien belongs."

French law adopted the Romanistic concept of status (état civil), which means that a person's rights and obligations are determined by his nationality, domicile, family relationship, sex and age. As a result, it is very important in France to prove one's status. To this end, the Code carefully regulates the drafting and registration of birth, marriage, death and burial certificates (Arts. 34-101 C.C.), which are called acts of civil status (les actes de l'état civil). The Code also regulates domicile, absentees, marriage and divorce, domestic relations, minority status and, finally, protection of minors and persons lacking capacity (Arts. 102-515 C.C.).

An example may show how clear and simple the language of the Code can be:

Art. 102 C.C. "The domicile of every Frenchman, with regard to the exercise of his civil rights, is the place of his principal establishment."

Second Book

The Second Book of the Civil Code concerns property and different kinds of ownership (des biens et des différentes modifications de la propriété, Arts. 516-710 C.C.).

Adopting the Roman classification, the Code divides property into that which is movable and immovable (Art. 516 C.C.). This corresponds to the division in Anglo-American law between personal and real property. What property is movable or immovable and what is the basis of this classification? The Code answers: "Property is immovable either by its nature or by its purpose (destination) or because of the object to which it is attached" (Art. 517 C.C.). "Property is movable by its nature or by legal definition" (Art. 527 C.C.).

What property is immovable or movable by nature? The Code describes each kind of property in simple and exact terms. Thus, for example, "The soil of the earth and buildings are immovable by their nature" (Art. 518 C.C.). "Property which is movable by its nature consists of bodies which can move from one place to another, whether by themselves, such as animals, or only by application of extraneous force, such as inanimate objects" (Art. 528, para. 1, C.C.). Examples: stocks, bonds, automobiles, etc.

The distinction between movable and immovable property is less meaningful now because of the great rise in the commercial value of moveables. Nevertheless, the law continues to distinguish between moveables and im-
movables, particularly in matters of taxation, mortgage, possession, conveyancing, registration, matrimonial property and property left without an owner. At the time the Code was enacted, however, personal property had little value in comparison to that of land. As a result the Code deals extensively with the ownership and possession of land.

In medieval France, the right of a common man to own land, even if it had been in the possession of his family for generations, was denied because of the feudal division of landed estates. The holder of the tenure had possession and enjoyment of the land while ownership remained in the hands of a noble, called the "lord." This condition lasted for centuries, although it was improved, little by little, such that some tenure holders became owners of their land even before 1789. Most peasants, however, continued to endure a mass of dues and encumbrances imposed upon them and their land by the owners of this land. Thus, the right of possessors to acquire simple and undivided ownership of land was of great importance to French people in 1804, with the result that the Civil Code devotes a whole chapter (Arts. 537-543 C.C.) to the topic "Of Property in Its Relation with Those Who Possess It" (Des biens dans leurs rapports avec ceux qui les possedent). Art. 537 C.C. proclaims that "Individuals have free disposition of property which belongs to them . . ."

This Chapter also describes: (a) property not susceptible to private ownership and thus categorized as public domain or communal property and (b) property susceptible to private ownership but left unclaimed or abandoned and property of persons who die without heirs (such property falls to the State). This Chapter does not include, however, a description of authors' rights, these being a new kind of property not yet legislated by the Codifiers. It should be noted that the editors of the Civil Code Dalloz have inserted the copyright law of March 11, 1957 with its subsequent modifications (Loi sur la Propriété littéraire et artistique) at the the end of this Chapter, following Art. 543 C.C.

The Code now deals with the concept of ownership, in one hundred and sixty-six Articles (Arts. 544-710 C.C.). These Articles reassure Frenchmen that their property rights are complete, exclusive and the most absolute of all rights; the time of the feudal lords is over: "Ownership is the right of enjoying and disposing of things in the most absolute manner . . ." states Art. 544 C.C.

Ownership carries with it the right of accession dealt with in thirty Articles (Arts. 547-577 C.C.). Accession is the right extending to all things produced by property and to all that which is joined to the property as an accessory whether naturally or artificially (Art. 546 C.C.). For example, "Ownership of the land carries with it ownership of what is above and beneath it" (Art. 552 C.C.). Another example: "If an artisan or another person has used material which does not belong to him in order to make a thing of a new kind . . . its owner has the right to demand the thing which has been made with it, on repaying the cost of workmanship estimated at the date of repayment" (Art. 570 C.C.).

**Question:** If you are an owner of a piece of wood and an artist makes a priceless sculpture from your piece of wood, do you have the right to retain the sculpture on repaying the sculptor's fees for workmanship?

**Answer:** Art. 571 C.C. "If, however, the workmanship was so important that it greatly surpassed the value of the material used, the labour shall be deemed the principal part, and the workman shall have the right
to retain the thing made, on reimbursing the owner for the cost of the
material, estimated at the date of repayment."

Ownership is one and undivided; a division between equitable and legal ti-
tle, so well known to Anglo-American lawyers, does not exist in French law. As
a result the trust in the common law sense, with its split of ownership into
legal and equitable titles, is not accepted in France. Instead, ownership is an
exclusive right because “the owner has the power to exclude all third persons
from any use, enjoyment, or disposal of his property and to take all convenient

Another characteristic of ownership is that it is perpetual. An owner can
be absent from his land for generations without making any use of it, yet the
right of ownership will not be lost (unless, of course, someone else acquires a
right over it).

Thus, the Civil Code defines ownership as a right free from the burdens
and encumbrances which existed under the Ancient Regime. This right,
however, is still restricted by the same Article, 544 C.C., mentioned above,
which states that property cannot be used “in a way prohibited by statutes or
regulations.” The right of ownership is shrinking as rapidly in France as in
other western world countries and Art. 544 C.C., because of its ambiguity,
allows, on one hand, the right of ownership to be maintained and, on the other
hand, to be restricted. Two such limitations carefully legislated are: (1) mining
law (Art. 552, para. 3, C.C.) wherein mines are now governed by a separate
Code enacted August 16, 1956 called the Mining Code (Code Minier) although
some Articles of the Mining Code are also inserted in the Civil Code and (2) serv-
itudes or burdens on land (Arts. 637-710 C.C.). A servitude may be compared
to an easement in Anglo-American law.

From the concept of complete ownership the Code moves to a limited right
in property, that is, the right of enjoyment (Art. 578 C.C.) called usufruct
(usufruit), that is, right to the use of and fruits of.

Third Book

The Third Book of the Code, entitled “Of the Different Ways of Acquiring
the Ownership,” is the most voluminous. It contains twenty Titles and one
thousand, five hundred and seventy-two Articles (Arts. 711 to 2283) which
cover many subjects. These subjects will be reviewed briefly in the same order
as they appear in the Third Book.

Title One: “Succession.” Under the Ancient Regime the law of succession
was very complex. It was governed by Roman law and by a variety of customs.
The Codifiers, in unifying the law of succession, protected the rights of
children, ascendants and collaterals above those of a spouse. The spouse was
called to the succession only in default of collaterals within the twelfth degree.

The situation of the surviving spouse has gradually improved and today, in
the absence of a will, the surviving spouse is a regular heir with a life estate
(un droit d’usufruit) in one-quarter of the succession if there are children (Art.
767, par. 2, C.C., Law of January 3, 1972), increasing to a life estate of one-half if
there are only brothers or sisters or their children, ascendants or illegitimate
children already born when the deceased was married. The surviving spouse
may even take the whole succession but only in the absence of descendants,

* For full reference, see page 349, Note 2, no. 2.

In addition, the Law of January 3, 1972 added Article 207-1 which grants an alimentary pension to a surviving spouse who is in need. This alimentary pension is paid by all heirs.

Title Two: "Donations Inter-Vivos and Wills." Contrary to the Anglo-American tradition of the freedom of testation, i.e., the right to dispose by testament freely as one pleases, French law imposes restrictions upon the testator who has either descendants or ascendants. Thus, a testator who leaves one child has right to dispose of one-half of his estate only; a testator who has three or more children may dispose of only one-quarter of his estate (Art. 913 C.C.). The share of the estate which is reserved for the testator's descendants or ascendants is called "la reserve." The surviving spouse, however, has no "reserve." A husband may thus completely disinherit his wife but he cannot disinherit his children, mother or father.

We notice here the continuity and flexibility of French law as expressed in the Civil Code. On the one hand, the old tradition that property is reserved for the family by blood remains unchanged from pre-Revolutionary France, on the other hand, the right to a life estate and to an alimentary pension for the surviving spouse was created and added to the Code as recently as 1972.

Title Three: "Contracts or Conventional Obligations in General" and Title Four: "Obligations Entered into Without Agreements" An obligation is a debt, a duty of one person to another to give money, goods or services and also to perform or not perform an act. The law of obligations contains the Anglo-American equivalents of contracts, quasicontracts, unjust enrichment and torts. The Code divides these obligations into conventional obligations (Title Three, Arts. 1101-1369 C.C.) arising from contracts and obligations entered into without agreements (Title Four, Arts. 1370-1386 C.C.). These latter may arise from quasicontracts (Arts. 1371-1381 C.C.), with quasicontracts corresponding to the Anglo-American concept of unjust enrichment or to "delits" and "quasi-delits," which are translated as offenses and quasi-offences or tortious and negligent acts (Title Four, Arts. 1382-386 C.C.). These five Articles constitute the whole of the French law of torts. Article 1382 C.C. will serve as an example: "Every act of man which causes injury to another obligates the one by whose fault (faute) it occurred to give redress." It is a general principle, a rule of conduct, leaving the courts to decide when a man is at fault and when he is not.

Fault is the basis of liability, whether resulting from a breach of contract or from a tort. The Codifiers, influenced by the individualistic philosophy of their day, believed in the free will of man and held him responsible for his conduct. Thus, contractual obligations arise because the debtor wished them to arise: they were created by his free will and with his consent. He should not have agreed to what he was not able to do; hence, in case of nonperformance of a contract, he would be at fault and liable for damages.

The liability for one's intentional acts, i.e., torts and unintentional acts, i.e., negligence causing damage to another is discussed by French writers under the heading of civil or delictual responsibility, to be distinguished from criminal responsibility. If a criminal act has caused damage to a person the victim may intervene as a civil party in the criminal proceedings. In this case, the penal and civil actions will be considered simultaneously by the criminal court.
Once the fault of the criminal has been established, he may be sentenced to prison in accordance with the criminal law and the victim may be indemnified in accordance with the provisions of the Civil Code. If the prosecution fails to establish criminal responsibility, the victim will have to start a separate civil action in damages. If the criminal court exonerates the presumed criminal and he proves, for example, that he had nothing to do with the crime committed because he was elsewhere, this finding will be res judicata as to the innocence of the presumed wrongdoer and a civil action will be barred. Breach of a penal law, however, will always be considered a civil fault and a basis for a civil action.

Following the general law of obligations the Civil Code deals with particular or nominate contracts, beginning with the “Contract of Marriage and Matrimonial Regimes” (Arts. 1387-1581 C.C.). Many jurists criticized this arrangement as lacking in logic and would have preferred to see the regulations governing Contract of Marriage and Matrimonial Property next to those concerning Marriage, Domestic Relations, Donations and Successions. The Codifiers, however, chose to follow the classification of the Roman law where nominate contracts were grouped together.

The law of matrimonial property offers financial security to spouses who, as noted above, were not considered to be regular heirs. This is accomplished by means of the matrimonial regime known as the Legal Community. Such a regime is established by law automatically if the future spouses fail to provide for themselves a contract of marriage. The Legal Community is regulated in detail by the French Civil Code, Articles 1400-1491. These articles control the property rights of the spouses during the marriage and at its dissolution, at which time the community property is divided in half between the spouses (or their heirs).

The community is composed of that which the spouses earn and acquire during their marriage, with the exception of “all property which has a personal character and all rights exclusively attached to the person” (Art. 1404 C.C., English translation: John J. Crabb, the French Civil Code, South Hackensack, N.J., Fred B. Rothman, 1977). There are a few additional exceptions outlined in Articles 1404 - 1407. Each spouse retains full ownership of his or her private property; the community constitutes a separate corpus of credits and debts under the sole administration of the husband.

Thus the property rights of the spouses are regulated by the law during the marriage and at its dissolution. “The community is dissolved: 1) by the death of one of the spouses; 2) by absence . . . ; 3) by divorce; 4) by judicial separation; 5) by property separation; 6) by change of matrimonial regime” (Art. 1441 C.C., Crabb translation; see above).

Of course, French spouses are free to choose any system of property they please, provided they express their choice by means of an antenuptial agreement drawn up through a document before a notary. It is a solemn contract whose form is regulated strictly by Articles 1387 to 1399.

In addition to the Legal Community, the Civil Code offers various models of matrimonial regimes (Arts. 1497 to 1581) from which the future spouses may choose. They may adopt a matrimonial system or regime as described in the Code or modify such a system or refer to a foreign matrimonial system or even invent one. However, once their choice is made and the antenuptial contract is
properly drawn up, their property rights are strictly regulated by the matrimonial regime they selected.

Until July 13, 1965, the matrimonial regime was irrevocable. However, the law has changed and today Art. 1397, par 1, C.C. states that "After two years of application of a matrimonial regime . . . the spouses may agree in the interest of the family to modify it, or even to change it entirely, by a notarial act, which will be submitted to confirmation by the court of their domicile." It is a costly and burdensome procedure and so it is important to choose carefully one's matrimonial regime before the solemnization of the marriage.

The Civil Code continues with the contract of sale (Arts. 1582-1701 C.C.), contract of exchange (Arts. 1702-1707 C.C.), contracts of rental and hire (Arts. 1708-1831 C.C.), contract of real estate promotion (Art. 1831-1 to 1831-5 C.C.), contract of noncommercial partnership (Arts. 1832-1873 C.C.), etc. Then the Code deals with the law of agency, creditors' rights and prescription. The last two Articles of the Code, Arts, 2282 and 2283, deal with possessory protection.

Other Legislation

The Civil Code is a compilation of statutes. There are, however, other forms of written legislation governing the rights of the French citizen:

- The French Constitution
- The "loi" or statutory rule
- The organic laws
- The ordinances
- The decrees.

The Constitution is the fundamental law of the state, establishing the form of the French government and the prerogatives of its political organs. Study of the Constitution therefore belongs more to the domain of political science than to law. The Preamble of the Constitution proclaims the general principles on which the French State is based and also proclaims equal rights and justice for all citizens. Implementation of these principles is achieved either by the particular laws, whether contained in the Civil Code or the Penal Code, or by the procedural laws and by the organization of justice, including legal aid law. The French legal aid legislation is one of the oldest in the western world.

The Constitution is distinguished from ordinary statutes by the formal requirements of its enactment and modification: "The initiative for amending the Constitution shall belong both to the President of the Republic on the proposal of the Premier (Prime Minister) and to the members of Parliament. The Government or Parliamentary bill for amendment must be passed by the assemblies in identical terms. The amendment shall become definitive after approval by a referendum," (Art. 89, para. 1 & 2, Constitution of 1958).

Before the Constitution of 1958, all laws were passed by the Legislature. The Constitution of 1958 limits the legislative power of Parliament and indicates which area of law may be enacted by it. All other matters are enacted by executive and administrative branches of the Government and are called
regulatory legislation. Thus, the Legislature passes "la loi," which may be translated as "ordinary law" but only in the areas of jurisdiction outlined in Art. 34 of the Constitution. Examples of these areas are:

- civil rights;
- nationality, status and legal capacity of persons, marriage contracts, inheritance and gifts;
- determination of crimes and misdemeanors (lesser criminal offences);
- criminal procedure;
- taxes and issuance of currency.

[Constitution of 1958, Art. 34, part 1, (Art. 34 is composed of four parts)].

Parliament also has control over organic laws proposed by the Government. The conditions for passing and amending organic laws are stated in Arts. 46 and 61 of the Constitution. The most important feature is that organic laws are promulgated only when the Constitutional Council has declared that they are in conformity with the Constitution. The purpose of organic laws is to complete and revise a number of constitutional provisions dealing with the structure of government. Example: Title Four, Art. 25 of the 1958 Constitution, "An organic law shall determine the terms for which each assembly is elected, the number of its members ... ", etc.

Finally, there is the Regulatory legislation: "Matters other than those that fall within the domain of law shall be of a regulatory character," (Constitution of 1958, Art. 37, para. 1). Such regulatory laws are issued as decrees and ordinances (orders) and emanate from the executive branch of the government. Their American equivalent is that portion of the law known as "subsidiary legislation."

All the above legislative enactments have the authority of law but vary as to the manner of their enactment and modification. They must all, however, be published in the Journal Officiel in order to be promulgated and promulgation is necessary to render a law binding.

Since the Constitution has only the character of a statute, there exists the possibility that the legislative or executive branch of government may enact legislation contrary to the constitutional law. In order to prevent such an occurrence, the Constitution of 1958 has created the Constitutional Council (Arts. 56-63), a special organ which determines the constitutionality of statutes prior to their promulgation, although only in the case of special laws such as organic laws and those submitted by the President of the Republic, the Prime Minister, the President of the Senate or the President of the National Assembly (Constitution of 1958, Art. 61). "The decisions of the Constitutional Council may not be appealed to any jurisdiction whatsoever. They must be recognized by the governmental authorities and by all administrative and judicial authorities," (Constitution of 1958, Art. 62, para. 2).

The Constitutional Council has no authority to prevent the executive branch from violating the Constitution. Only the Council of State, the highest court in administrative matters, has jurisdiction to determine whether acts of the executive are illegal or unconstitutional.

In France, the written law, whether in the form of a Constitution, a compilation of statutes or a code, an individual statute, organic law, decree or ordinance, is the primary source of law. Judicial decisions, contrary to Anglo-American tradition, have no legally binding authority and this is based on the principle of separation of powers. Thus, the French judge has the right neither
to legislate nor to control the constitutionality of law. He must interpret the law, but not make it. In practice, of course, the courts are influenced by previous decisions but French lawyers will never refer to the "case law" as a binding authority.

_Doctrinal writings_, produced by law professors and other legal scholars who have often devoted their lifetimes to scrutinizing and analyzing the written law and the decided cases, consist of the familiar, great French treatises (traités). These systematic, in-depth studies, written in clear, flawless French and treating broad areas of law, assure the continuity of legal scholarship. They are depositories of knowledge whose interpretation of the law is analyzed, revised and if necessary, modified by succeeding generations of jurists. The jurists also write the case notes (notes d'arrêts) which contain critical appreciations of the judicial decisions.

All these writings form the "doctrine" or legal science which influences the legal thought of students, practitioners, judges, teachers and anyone who is interested in the law. They have, therefore, strong persuasive authority through exercising great moral and practical influence but they do not have legal authority.

**French Court System**

A few words should be said about the French court system. French law does not distinguish between equity and common law. Instead, France has a dual system of courts: judicial or regular courts and administrative courts. The former have jurisdiction over all matters except those in which the State is a party; these are under the control of the administrative courts.

The court of last resort in administrative matters is the **Council of State** (Conseil d'État) which acts both as a legal advisor to the government and as a supreme court of appeal. The courts of first instance are called **Administrative Tribunals** (Tribunaux Administratifs). All these courts are completely independent of executive and judicial power. They control the legality of administrative action and have power to interpret and, if necessary, annul administrative acts. They also have general jurisdiction over breaches of contracts and torts committed by public employees in the course of their duties, with one exception: actions for damages caused by vehicles owned by governmental agencies are under the jurisdiction of the regular courts. The general rule remains unchanged, however, that administrative courts have jurisdiction over all cases where the government or its agents are involved.

In criminal matters, the rule is different. Crimes committed by public servants in the course of their employment are judged by the regular courts since criminal law has always been within the jurisdiction of the regular courts. Again, there are exceptions to this general rule: actions for high treason against the President of the Republic or actions against members of the Government for crimes or misdemeanors committed in the exercise of their office are within the jurisdiction of the **High Court of Justice** (la Haute Cour de Justice). This Court is composed of elected members of Parliament and was established by the Constitution of 1958 (Arts. 67 and 68).

The **Council of State** does not have an administrative code to rely upon for its decisions as these are not necessarily based on written legislation. Instead, the **Council of State** may follow its precedents and invoke general principles of law and justice. The decisions of the **Council of State** are short and concise.
Let us now consider the regular or judicial courts, which are either ordinary or specialized. There are, in each case, two degrees of jurisdiction on the merits: original jurisdiction and appeal. The highest court in judicial matters is the Cour de Cassation which constitutes an extraordinary remedy and not a third degree of jurisdiction. The Cour de Cassation does not try the case on its merits but simply reviews the interpretation of the law by the courts below. The Cour de Cassation was created in 1790, fourteen years before the enactment of the Civil Code. Its official seat has always been in Paris. The Cour de Cassation "has progressively asserted and extended its function and is today considered by everyone the sovereign interpreter in the whole field of private law. And yet the legal basis of its jurisdiction is still defined in its organic law which ... authorized [it] to annul judicial decisions only in the cases of an express violation of the text of the statute." (Law of 27 November -1 December 1790, Art. 3, see Gény, no. 45, p. 59).5 “It is worth noting that the laws subsequent to the organic statute of 1790 have been somewhat less categorical and have provided for cassation on grounds of express infraction of the statute without requiring the violation of the text.”

The Cour de Cassation has power to distinguish between a question of law and one of fact. Since such a distinction is rather difficult to formulate, the Cour de Cassation has complete discretion to decide whether it will hear a case or not, and thus to expand or to narrow its own jurisdiction. However, only the decisions from which there is no appeal, that is, those rendered by the courts of last resort, may be heard by the Cour de Cassation.

If the Cour de Cassation decides that the judges of the lower court have made an error of law, it will quash or annul their decision and send the case back to a new court of the same level as the court whose decision was quashed. The new court is not bound by the interpretation of law given by the Cour de Cassation, so that if the court of rehearing refuses to follow the Cour de Cassation, the aggrieved party can take the case for the second time before the Cour de Cassation. This time the case comes before the full court, that is, before "toutes chambres reunies." When the Cour de Cassation quashes the decision the second time, it again sends the case back to a court of the same level. But now the lower court is bound to accept the interpretation of law given by the Cour de Cassation.

Contrary to the practice of the Council of State, mentioned above, the decisions of the Cour de Cassation are always based on written law. The Cour de Cassation explains the legal basis for its decisions in a clear and concise manner.

Les tribunaux de grande instance (Courts of major jurisdiction) are ordinary judicial courts of first instance which have general jurisdiction in all matters, including criminal cases but excluding areas of law reserved to specialized courts, such as the labour courts (Les conseils des prud'hommes), the commercial courts (Les tribunaux de commerce), etc. The decisions of the tribunaux de grande instance are always rendered by three judges and are unsigned and brief. The "délibérations" of the judges remain confidential. Appeals from the tribunaux de grande instance and from the specialized courts are taken directly before the Court of Appeals (la Cour d'Appel).
There is no jury trial before the courts of major jurisdiction or before the Court of Appeal. Trial by jury occurs in only one instance: before the Assize Court (Cour d'assises) which has criminal competence exclusively and handles the most serious crimes after they have been referred to it by a decision of the Court of Appeals.

France, therefore, has two separate and autonomous systems of courts. In conjunction with these two systems, however, a special court, called the Tribunal of Conflicts (le Tribunal des Conflits), was created in 1872 to solve conflicts of competence between the judicial and administrative courts should such a need arise.

Conclusion

We have concluded that the French civil law is a system of "written law." Because the French judge cannot rely on decided cases in the same way as his Anglo-American counterpart, he must rely on the interpretation of law as developed by eminent jurists. The work of these jurists is the common background of both practitioners and judges. French jurists hold a university degree of license in law (licence en droit) which demands four years of study at a faculty of law. A judge and a lawyer have the same academic background which prepares them for a scientific interpretation of law.

Such an interpretation is based mainly on the following four methods:

1. **Grammatical Interpretation**, when the meaning of the term used in a legislative text is taken literally without recourse to legislative intent or social or moral justification. It is understood that "the statute speaks for itself."

2. **Logical Interpretation**, when the legislative text is not considered as an isolated writing but in the context of other legal terms used in the same statute, other legislative enactments and general principles of law.

3. **Historical Interpretation**, when the legislative text is examined through its legislative history and the draftsmen's reports are carefully studied. It is crucial, in this method to ascertain the legislative intent at the time of enactment, in order to comprehend the original purpose of the statute.

4. **Teleological Interpretation** (also called "extensive" or "progressive"), when the legislative texts are considered as mere mechanisms or tools to promote social welfare. This interpretation of law is dominated by the social purpose involved in the case to be decided. For example, Article 6 of the Civil Code: "Laws relating to public order and good morals cannot be derogated from by private agreements." The concepts of "public order" and "good morals" are changing with time. The courts must decide in the case before them what society considers today to be "public order" and "good morals." They must ensure that concepts and definitions correspond to our present social values. (Cf. (1) François Gény, Méthode d'interprétation et sources en droit privé positif, no. 194, (2) René David and Henry P. de Vries, The French Legal System, pp. 87-99.)

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7 Id.
8 For full reference, see page 349, Note 2, no. 5.
The combination of a Civil Code, based on general principles and of a tradition of scientific interpretation of the law assures the flexibility of the Civil Code. This may explain why the Civil Code has not been repealed since 1804 and may continue to regulate the lives of Frenchmen for a long time in the future.

APPENDIX A

NOTE 1

Citations from the text of the French Civil Code are taken from the following translations:


NOTE 2

This paper relies on the authority of the following writers:


APPENDIX B

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