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THE APPROACH TO FRENCH LAW

FREDERICK H. LAWSON†

French law is one of the most important that the world has known. With more or less change it has spread, over half of the western part of continental Europe and the parts of other continents which are or were subject to its administration as colonies, over the greater part of Latin America and over much of the Middle East. It has a magnificent literature, and although it has a long history, it seems to possess the secret of unlimited but gradual growth. But it is also a member of a large family of laws which is known to common lawyers as the Civil Law. It is on the whole the most accessible member of that family to English speaking lawyers, and therefore forms a most appropriate subject for the first lecture in this series. Much that must be said about it is also true of other civil law systems and need not be repeated later.

The term "Civil Law" is a misleading though not entirely untrue description. It applies in only a slight degree to public law or criminal law. But it does help to emphasize the fact that French law and the other civil law systems make a much clearer distinction than common law systems between public and private law. For common lawyers the distinction is mainly literary. The subject matter of the two types of law is sufficiently different to justify dealing with them in different chapters or different books, but there is no sense of entering a different world when passing from one to the other. In French law, on the other hand, that sense is very marked, because cases concerning public administration fall within the jurisdiction of a special hierarchy of administrative courts which do not deal with cases between one private person or corporation and another, and the whole atmosphere of the law which they apply is very different from that of the law applied in the ordinary civil courts. Hence the distinction between public and private law is one of kind and not a matter of mere classification.

PUBLIC LAW

French public law is of absorbing interest. Many persons who would not think of themselves as comparative lawyers know a good deal about the Conseil d'État, the supreme administrative court, and hold it up as a model to common lawyers. It is very French, though the general

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part of the administrative law it applies is in some respects like the Common Law, being uncodified judge-made law. I shall say very little about it. American lawyers are unlikely to come into contact with it in the course of their practice except in relation to tax problems and there the expert advice they will need is that of a very specialized type of lawyer. But it is worthy of mention that although French administrative law is not Civil Law, its separate existence is characteristic of a civil law system. Since Civil Law had hardly anything to say about the solution of administrative problems, administration was at first the field of arbitrary action. The development of administrative law by the Conseil d'État represents the conquest of a new field of activity for the rule of law, though a law which is different from the Civil Law. Some would say, perhaps with some exaggeration, that administrative action is now more effectively controlled by law in France than in Common Law countries. On the other hand, constitutional law is hardly law in the full sense that it has acquired in America, but is more akin to political science.

Nor shall I say more about criminal law than that it is completely codified and that its general part is more specifically worked out and studied than the part devoted to the definition of specific offences. Here is a marked contrast to the criminal law of common law countries.

CIVIL LAW

We come then to French private law. Here I shall leave on one side commercial law, partly because I do not know it at all well and partly because, however great has been the part it played in the past in developing the semi-international law merchant, it is not a world leader today. French civil law in the narrow sense of the term is, on the other hand, very much alive and very progressive. It is constantly being studied by lawyers outside the countries where it is in force.

This is Civil Law in two senses. First, there is the usual meaning of "civil" which marks it off from public, criminal and commercial law. Secondly, it is this part of French law that is pre-eminently Civil Law in contrast to what we call Common Law. If French law is a civil law system and not a common law system, it is because this civil law in the narrower sense of the term has features which distinguish it very clearly from common law systems. Moreover it is not unfair to give peculiar prominence to the civil law portion of French law because, like common law in the narrower sense, to the exclusion of enactments but with the inclusion of equity, it forms a sort of general legal grammar which is used to supplement other parts of French law where they are deficient in general principle. The Civil Code, which contains the fundamental rules

and principles of civil law, is the most central and essential part of French law. Hence, if a foreign student wishes to acquire a grasp of French law and can devote very little time to the task, he must at all costs study civil law if he neglects all else, just as a foreign student who studies only common law and equity has the makings in him of a good American or English lawyer, whereas if he studies only the enacted parts of the law he remains wholly uneducated.

THE INFLUENCE OF ROMAN LAW

We must now ask what it is that makes French Civil Law a member of the large family of civil law systems. The main bond of union between those systems is the possession of a legal grammar derived from Roman Law. Common lawyers, when they pay any attention to the Civil Law ordinarily fall into the trap of regarding it as no more than modernized Roman Law. From a scholarly point of view and particularly from that of the comparative lawyer, the error is unfortunate, for it over-emphasizes the resemblance between the various civil law systems and leaves out of account many elements which have little or nothing to do with Roman Law. Thus, most of family law and much of the law of succession are derived from old customs which varied greatly in different countries, regions, towns and even villages, though some of the technical apparatus of those parts of the law, in contradistinction to its policy, is of Roman origin. And although the law of property and the law of obligations, which includes the law of contracts, torts and unjust enrichment, are derived ultimately from Roman Law, anyone brought up on the pure Roman Law of the ancient world must accustom himself to many un-Roman generalizations and to new ideas that have come from outside.

These factors have led many good comparative lawyers to hold that the study of French law should not be through Roman Law. I am stubborn in my conviction that they are wrong for two main reasons, one of them general, and the other especially appropriate to the practical needs of foreign lawyers who may have to deal with French law. Let me take the latter first.

A distinction is often drawn between lawyers' law and laymen's law. The former has been made or developed by lawyers in the courts or in the universities. It is their special province, they claim an almost exclusive knowledge of it and they take a certain responsibility for its form and content. The heart of it is the law of property in its broadest sense and the law of obligations. Here the policy of the law has usually been overlaid in course of time by a mass of technical rules and principles,

which demand the constant attention of the lawyer. Neither the lawyer nor the layman is now greatly concerned with the underlying policy. On the other hand, in family law and the law of succession, although the lawyer is needed to deal with technique, questions of policy are now very much to the fore and they are not so much the lawyer's business as the layman's. When lawyers practice these branches of law they doubtless get an excellent livelihood, but as servants, not as masters. Law teachers can do little to mold them; they can only expound them.

Now the parts of French Civil Law which are lawyers' law most deserve the attention of foreign lawyers, not only because they are likely to present to him the most practical problems but also because they are likely to be the most difficult to understand. In course of time, lawyers' law tends to take on more and more the character of a stubborn, artificial and coherent philosophy. Since it is stubborn, lawyers adhere to it even when they cannot understand it; since it is artificial, it cannot always be understood by the light of natural reason; since it is coherent, no one part of it can be properly grasped without a comprehension of the whole. Legal systems have often been likened to languages. At all these several points, the comparison is surely just.

Now as I have already said, this lawyers' law part of the Civil Law is for the most part of Roman origin. The main inhibitions which are everywhere necessary to prevent a lawyer "going off the rails," are in the Civil Law of Roman origin. Since it is Roman Law which binds all the civil law systems together, and since the elementary study of Roman Law is much easier than that of any modern system, it is wise for a student of French law to start with a brief study of Roman Law.

But there is, as I said, a more general argument in favor of teaching French law through Roman Law. The parts of French law which were until recently most systematically taught were the most Roman, and the hard core of French legal doctrine is to be found in the very Roman Law of property and obligations, which plays the same role in French law as the specifically common law portions of the common law systems. Now, in Maitland's phrase, "Taught law makes tough law." A body of law taught for many generations creates inhibitions in lawyers who have passed through a traditional education in it. It forms a conceptual structure of legal thought from which lawyers escape only with difficulty. All civil lawyers think on Roman lines even when their law is not Roman. Common lawyers do not.

I cannot describe these inhibitions in detail. I shall select for brief mention only two, an almost instinctive insistence on the distinction between real and personal rights and a constant hankering after absolute and

undivided ownership. Thus the trust, which to us seems an almost indispensable institution, is very hard for civil lawyers to understand, much harder to accept.

It was the difficulty that Hohfeld encountered of placing the right of the beneficiary of a trust into either the class of real rights or that of personal rights that led him to investigate the nature of a real right and then of rights in general. He concluded that the distinction between real and personal rights was not one of kind but of degree, the persons of incidence being in the one case many and in the other few. But in Roman Law, the line between the two is sharp, and although it became vague in the Middle Ages, all aberrations were abolished in modern times and the line became sharp again. A right is either real, as we say with some inaccuracy operative against all the world, or personal, operative only against some determinate person or persons.

Thus, whereas for Hohfeld the right of a beneficiary, a *cestui que trust*, is real, since it can be cut off only by a bona fide purchaser for value without notice, actual or constructive, of the trust, a civil lawyer would have to call it personal and so exclude it from the law of property and relegate it to that of obligations—which would deprive it of what for us is its most important characteristic.

Or look at it in another way. Property and obligation are kept clearly apart; and the primary questions in property law have to do with ownership. Now the trust is essentially a personal relation between trustee and beneficiary. We think of the beneficiary's personal right against the trustee as also constituting a species of property which can be owned, a *chose in action*. This conception is not easily accepted by a French lawyer, who most naturally thinks of ownership as attaching to physical objects; some civilians indeed find it difficult to speak of *owning* a patent or copyright.

The hankering after absolute and undivided ownership, though it must give way on occasion to urgent needs, cannot tolerate anything comparable to the common law doctrine of estates or the distinction between legal and equitable ownership. Although French lawyers, under the title of *patrimoine*, know the revolving fund, they have difficulty in conceiving of it as being owned. Here again there is a barrier which those who urge a frank acceptance of the trust find it difficult to surmount, for the trust in its most useful modern forms creates interests in such funds rather than in the physical objects of which they are from time to time composed.

Of course, most of what we do by means of the trust is done in French law also, but by different means, viz., by the technique of

guardianship, by the recognition of foundations as institutions regulated by public law and by very complicated arrangements in the law regulating the property relations of husband and wife—all of them fascinating topics demanding careful study by comparative lawyers. But French law cannot apply to the solution of problems any such general purpose instrument as the trust.

Finally, the distinction between property and obligation combined with the hankering after undivided ownership to delay for many centuries the full protection of a lessee's right to land. Since a lease is a contract, it should bind only the lessor to the lessee, and although the lessee is now fully protected against anyone who has purchased the land from his lessor, the sacrifice of logic has not been carried far enough to allow him to mortgage his lease.

STUDY OF THE CONCEPTUAL STRUCTURE

I have said that no part of a tight conceptual structure can be fully understood without an understanding of the whole. This is not so difficult as it might seem. A grasp of the main elements of Roman Law can be acquired quite easily and quickly, and without any knowledge of the Latin language. When one passes beyond that stage and approaches French law, the language question becomes important. Fortunately, there is a good book on French law in English, an *Introduction to French Law*, by the late Sir Maurice Amos and the late Dr. F. P. Walton. Unfortunately, it is out of print and hard to get, but a new edition will, it is hoped, appear in the course of the next year or two. Both authors had long experience of the practice as well as the theory of French law. Beyond that, the student of French law must have a working knowledge of French. He need not speak it or even be able to understand it when spoken. Still less need he write it. But he must be able to read it. French is not so remote from English as to make that a difficult task. Most of the abstract terms, which are always occurring in law books, are the same.

Dictionaries, even those called legal dictionaries, afford little help. They provide indeed a starting point but no more, for commonly enough exact equivalents cannot be found. Indeed one ought not to search for such equivalents. The only way to get a firm grasp of the meaning of a word—more especially if it is technical—is to see how it is used. For this purpose the best dictionary is one of the standard textbooks such as Colin, Capitant et Julliot de la Morandière, *Traité de Droit Civil*. By reading such a book, one can pick up at the same time enough of the French language and the general outlines of French law. The task is

neither boring or troublesome, for French jurists¹ usually write with a clarity and elegance which is certainly not the rule among English speaking lawyers. Indeed, French law is admirably served in this respect by those who teach it, and to acquire a general knowledge of French Civil Law is actually a pleasurable undertaking.

THE SOURCES OF FRENCH LAW

A conceptual framework is only half the technique of a legal system. The other half is concerned with the sources of the law and the ways in which they are used. Some comparative lawyers have found here the greatest difference between French law and the common law systems, and have emphasized the difficulty that a common law lawyer will find in handling French source material. I believe that this is an exaggeration, and for that reason and because the French sources are admirably described and discussed in a recent book by Professors René David and Henry P. de Vries,² I propose to say less about them than I should otherwise have thought necessary. Moreover, whereas the general structure of substantive law can be learned well enough from books—this is especially true of a “bookish” law largely built on a study of the Roman law books—the handling of source material can be learned only by practice. However, no student can begin to understand French law unless he has a general understanding of its sources. I must therefore say a few words about them.

The main sources of common law systems are judicial decisions, legislation, extrajudicial literature, and, except in the United Kingdom, a written constitution. Of these the constitution, where it exists, is paramount, legislation (provided it is constitutional) ranks next, judicial decisions enjoy such authority as is attributed to them by the ruling doctrine of precedent and, incidentally, may give to legislation an unexpected interpretation. Extrajudicial writing, in treatises and law review articles, enjoys an authority which is at best persuasive and varies with the prestige of the author. Constitutions may be very fragmentary, legislation is in the aggregate incomplete, though partial codes may cover the whole of several branches of the law. Where there is no enacted law, the gap is notionally filled by common law or equity, both bodies of doctrine having being laid down by past judicial decisions or, if not so laid

1. The word “jurist” is throughout this lecture used in the sense it bears in England, *i.e.*, as denoting a lawyer who discusses the law in a learned way outside the courts in treatises or articles. It is not synonymous with either “lawyer” in the wide sense of the term or “judge.”

2. DAVID AND DEVRIES, *THE FRENCH LEGAL SYSTEM: AN INTRODUCTION TO CIVIL LAW SYSTEMS* (1958).

down, at least expected to be laid down by other decisions in the future. Thus, the original deposit of law is judge-made law, and all the rest merely modifies it.

Now, in French law, with the one important exception of administrative law, the position is in theory quite different. Legislation, in the form of codes or other statutes, is primary, in the sense that all courts, when deciding cases, must base their decisions on some enactment. Moreover, since any judge who refuses to decide a case on the pretext that the law is silent commits a criminal offense, all enactments taken in the aggregate must provide a solution for every problem. Thus the latent completeness of common law and equity, taken together, finds in France its counterpart in the latent completeness of the enacted law. There is, however, no pretense that administrative law is completely contained in codes or other enactments.

Another important difference between French law and Common Law systems outside the United Kingdom is that the courts cannot question the constitutionality of acts of parliament. In spite of the fact that the legislative powers of parliament are limited by a constitution, there is no judicial review of statutes. Rules, regulations, or other acts of subordinate legislation are another matter. They are treated not as legislative but as administrative acts and their validity can be questioned in a court of law, most commonly before the Conseil d'État, the supreme administrative court.

“JURISPRUDENCE” AND “DOCTRINE”

It is difficult enough to estimate the authority of judicial decisions and extrajudicial writings in England, and much more difficult in the United States. At one time it was fairly easy to make such an estimate for France. Both had only persuasive authority, though a constant course of decision or an unanimous opinion of the jurists more or less fixed the law, and if courts and jurists were in full agreement there was, for the time being at least, no doubt. At the present day, the balance of authority has swung decisively in favor of the courts, at any rate of the highest court, the Cour de Cassation, which has increased its authority by adhering pretty constantly to its own precedents. But on a lower level the regional courts of appeal, while they almost invariably follow the lead of the Cour de Cassation, do not seem to adhere so closely to their own previous decisions, and they accept only the *jurisprudence constante* of the other courts of appeal taken as a whole. I accept the finding of

M. and Mme. Tunc³ on this matter: French courts adhere to precedent less strongly than English courts but more strongly than American.

However, three qualifications must be made. In the first place, although there is an immense flow of litigation in France, only a trifling fraction of all the cases are reported. Thus, the mass of precedent is not nearly so great as in America and is probably a good deal less even than in England. In the second place, some of the sparseness of reporting is due to the much looser texture of French law. The French courts are much more inclined than common law courts to decide cases on the facts and show little tendency to turn fact into law, partly no doubt because there are no civil juries. Thirdly, although French courts, unlike common law courts, are bound to give reasons for their decisions, they do not set out their reasons as explicitly as common law courts. The Cour de Cassation is almost sphinx-like in this respect. Hence the habit the reporters have formed of employing eminent jurists to write long footnotes to cases, in which they try to explain the opinions of the courts, to criticize them and to relate them to the rest of the law. So, although it is not unfair to regard France as a case-law country, an American lawyer will find its *jurisprudence* very unfamiliar.

If the importance of *jurisprudence* has increased, that of *doctrine*, the writings of jurists, has certainly declined. But we have it on the excellent authority of Professors David and de Vries that its present status is especially hard to assess.⁴ No study has been made of it recently. I would hazard the opinion that it is not only much higher than in England, but higher even than in America in spite of the enhancement of the academic lawyer's status. For in France the jurist's authority antedates the judge's; he still counts to some extent as the successor of the classical jurists who were the main agents in developing Roman Law. French law professors are well known by name, whereas that is true of only a minute portion of the judges. Then French professors speak *ex cathedra* and leave their views in no doubt; and although they always include rebels and are in the mass forward looking enough, their main task has always been to hand down, analyze, systematize and polish a body of received doctrine. Even when a marked shift has taken place, their prevailing tendency is to set to work to build up a new solid edifice; they have a taste for constructing, if not wide ranging systems, at least fairly extensive coherent bodies of doctrine. Contrast with this Professor J. P.

3. ANDRÉ AND SUZANNE TUNE, LE DROIT DES ÉTATS-UNIS D'AMÉRIQUE: SOURCES ET TECHNIQUES 183 (1955).

4. DAVID AND DE VRIES, *op. cit. supra* note 2, at 126.

Dawson's remark that in America "When anyone ventures to construct a system, we all set cheerfully to work to destroy it."⁵

THE CIVIL CODE

I have said that the ultimate source of French law, except for the general principles of administrative law, is always in theory some act of legislation, and that the Civil Code occupies a central position in it. The difference between a central Civil Code and a central common law must always be kept in sight; but it must not be allowed to obscure realities. For it would probably be correct to say that the Civil Code hampers French lawyers in developing the law less than the common law hampers American or English lawyers. This is so for a number of reasons.

The first is that it is old, having existed for over a hundred and fifty years, and that, although France has changed much less in the last century and a half than England or America—who knows how successful the new regime will be in breaking the crust of conservatism?—at many points it cannot be applied precisely as it was in 1804. To some extent it has been amended by subsequent legislation, but almost always in the parts which are not preeminently lawyers' law. Lawyers' law has been modified by the interpretation given to the Code, first by the courts and then by the courts and jurists in conjunction.

But, secondly, the most influential among the compilers of the Code, Portalis, in a much-quoted passage disclaimed any wish to bind posterity. Hence, the Code was deliberately made loose-textured. No attempt was made to enunciate a coherent doctrinal system. Important questions were pin-pointed and given a solution, but a good deal of play was left in the machine.

Thirdly, even so, the courts have from time to time played fast and loose, if not with the actual words of the Code, at any rate with their obvious underlying meaning. Exceptions have been made to swallow up rules, the balance of importance between two doctrines has been shifted so as to make the less important one prevail over the more important, and so on. As might have been expected, the changes have taken place in those parts of the law where they have not been likely to disappoint the reasonable expectations of those who planned their activities on the basis of the existing law.

I will give only two examples of such progressive interpretations. The Civil Code enunciates the general principle that a person cannot exact a promise for a third party otherwise than as an agent. By way of exception it provides that a person can stipulate for the benefit of a third

5. DAWSON, UNJUST ENRICHMENT 111 (1951).

party when this is the condition of a stipulation for his own benefit or of a donation made for another. By a devious course of interpretation the exception has been made to eat up the rule, so that third party rights are now fully protected in French law.

An example of the way in which what was originally regarded as a less important has been made to prevail over a more important provision is the substitution of strict liability for liability based on fault. In what is certainly the principal article, a person is made liable to repair damage caused by his fault. Then, in another article which was almost certainly intended to be subsidiary, he is made liable for damage caused by things under his care without any explicit requirement that they must have been of a dangerous character or that he must have been at fault in not controlling them sufficiently. After sleeping unnoticed for about a century, this subsidiary article was suddenly brought into the limelight and, interpreted literally, has left little room for actions in which fault has to be proved.

There is a general impression abroad that French courts interpret legislation more freely than common law courts, and that they pay less attention to the grammatical sense of words and more to the *ratio legis* and to legislative history. This view is in general correct, but we have recently been reminded⁶ that it hardly applies to criminal law and tax law, where statutes are in general strictly construed. Moreover this is also true of what are called *lois d'exception*,⁷ that is to say, statutes which derogate from the general principles of the Codes. Since courts in common law countries traditionally interpret enactments so as to derogate as little as possible from the common law, this is a good example of a resemblance to which I have already alluded, between the Codes, in particular the Civil Code, and the unenacted law of the common law systems.

Before I pass to procedure may I just mention the important fact that French law makes no distinction between law and equity. Most of the institutions and remedies of what we call equity are known to French law except for the trust, but they are completely integrated with the rest of the law; for equity has never been administered in separate courts. An American or English student of French law need certainly not be distressed by the absence of a familiar distinction and may even fail to notice it.

6. DAVID AND DE VRIES, *op. cit. supra* note 2, at 90.

7. *Id.* at 91.

PROCEDURE AND EVIDENCE

The details of legal procedure are so much the concern of practicing lawyers that the layman, if he is wise, and indeed the foreign lawyer, is peculiarly disinclined to meddle with them. A person who, perhaps justly, feels satisfied that he can understand unaided his substantive rights is readily persuaded that he needs professional help to enforce them by legal proceedings. But this willingness to confess ignorance extends only to detail. Most intelligent persons have a very good idea of the general run of trial procedure and also deep-rooted notions, and even prejudices, as to what it should be. Indeed, it would be fair to say that the outlines of civil and criminal procedure are much better known to the ordinary American or Englishman than any but a few points of substantive law outside his special experience. He probably acts in his ordinary affairs in what he considers to be a common sense sort of way, without bothering about the law but upon a general subconscious assumption that what is common sense is also good law. For him law usually means the dramatic procedure of a jury trial; and in one way or another he has in his mind a pretty accurate picture of counsel's speeches, cross-examination, the aloof impartiality of the judge and the like. In England at least, popular accounts of criminal trials have a very wide circulation and all the world reads thrillers. I would go farther and suggest that educated Frenchmen know more about the procedure in an English court than a French trial, for one constantly finds them reading English and American detective novels, whereas the French press gives little space to the reporting of lawsuits.

The main principles of procedure are more deeply rooted in a nation's habits and desires than most of substantive law, at any rate where it does not concern the family or succession on death. Probably large masses of the American substantive law, for instance of contracts or torts or crime, could be replaced by French law without the change being noticed by the ordinary citizen; and the converse would also be true. The lawyer would feel at sea but not the layman. But if the *juge d'instruction* were introduced into America or England or cross-examination into French trials, the educated layman would scent unfairness or even oppression. That he would probably be wrong is beside the point. Each country is attached to the procedural safeguards it has built up for itself and has learned to avoid without special precautions most of the dangers that the other country has been at pains to exclude.

Secondly, substantive law and procedure cannot be divorced. Least of all can rights or liabilities be completely understood without considering the rules of evidence which govern the means by which they can be

established in case of dispute. Now here there are profound differences between French law and the common law systems. In the first place, France has never known the civil jury, and the criminal jury, which is used only in the most important cases, was introduced from England only so late as the Revolution of 1789 and has been radically modified in recent years. Hence, the relation between law and fact has always been very different from that which exists in the common law systems. For only one purpose does it need to be sharply drawn, namely, in order to ascertain if the decision of a court of appeal can be attacked before the Cour de Cassation, the one central civil and criminal court; for that court cannot consider questions of fact. In other words in the actual trial of a case, law and fact can be jumbled together without anyone being the worse for it. There can be no question of turning fact into law in order to withdraw cases from the jury in which prejudice might lead them to find for one party or the other. Hence, French law is much looser-textured and much less detailed than the common law systems. Moreover, the absence of the jury makes unnecessary the elaboration of exclusionary rules of evidence such as those relating to hearsay. Professional judges can, it is thought, be trusted to discount or attribute diminished weight to evidence which in America is thought to be too dangerous to submit to a jury. Whether in this the French are always right is not quite certain. A very experienced French friend of mine once told me that he would not trust even a judge not to be improperly influenced by knowledge that an accused person had been previously convicted of similar offenses. But the French, who had once suffered under an extremely technical and complicated system of proofs, reacted so violently as to leave the decision of cases to the *intime conviction* of the judges. That is to say, the judges were to find the truth to their own satisfaction untrammelled by technical rules.

This means that proof of fact is not nearly so strict as in common law systems. If the judge is convinced of the truth of an allegation, that is enough. If a party is not then satisfied, he can appeal, but that only means that he has a chance of convincing another, probably more expert or experienced judge. Hence, although French law retains—to a greater degree than American or English law—rules excluding the testimony of certain kinds of witnesses, the judge can often make use of their unsworn statements.

By way of compensation, oral testimony is excluded from civil procedure to a much greater degree than in England or even America. It is as if the Statute of Frauds extended to all acts in the law. Even in accident cases the evidence of witnesses is viewed with suspicion. Credence

is attached rather to measurements taken by the police. It is perhaps partly for this reason that the French courts have substituted strict liability in such cases for the old liability resting on proof of fault.

Written documents and other writings receive a treatment very different from that accorded them in America or England. In the first place, they prove themselves in a way that would shock most common lawyers; and to attack their genuineness is a serious and troublesome matter. For this and other reasons, to prove a contract by written evidence is surprisingly easy. But once proved the picture changes: the written terms of a contract are by no means as conclusive as they would be here or in England; oral evidence can be given to explain or even vary them. With respect to commercial cases written evidence is in general unnecessary since they are normally tried in special courts. Thus, to enunciate the French law of contracts without reference to the ways in which they are proved may be very misleading.

How far apart French legal practice is from that of England may be judged from a dialogue which took place in my presence. A very distinguished French judge was explaining the decisive importance attached to serious and concordant presumptions. The English professor asked him how the raw facts were established on which the presumptions were founded, upon which the Frenchman answered that they were rarely in dispute. At that the dialogue had most disappointingly to be brought to a close.

I do not know what is the moral of all this discussion of procedure and evidence, unless it be to warn my hearers that even if they have accustomed themselves to the fairly strange world of French substantive law they have fresh surprises in store when they came to actual practice. But such surprises can be beneficial, for they can help them to see more clearly into the nature of France and the French people.

CONCLUSION

Now to end. I am too old a hand to assume the hazardous task of characterizing French law as a whole or of comparing it in a few words with the common law systems. When I feel tempted to praise its logical perspicuity and the way in which it hangs together as a coherent system, I am reminded that it has nothing so abstract or so logical as the English law of real property, and that the French law of torts is if anything more fluid and empirical than the English. If I feel when reading the great treatises on French law that the jurists know much better than we what they are doing and how to explain it, when I turn to the reports of cases in the Cour de Cassation I feel that the judges know better than anyone

else how to conceal such knowledge. In spite of the Cartesian clarity of thought of which Frenchmen are so proud, French law is no less full of inconsistencies than the common law system. In other words, it contains the idiomatic irregularities of an old and civilized language; and just as the French language, so clear and translucent in its elegant simplicity, eludes the efforts of all who have not been brought up from childhood to use it, so French law with all its rationality and massive good sense eludes, while it fascinates, the foreign observer.