

3-1-1970

## *Civil Procedure in France*, by Peter Herzog with Martha Weser(1967)

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### Recommended Citation

Jean-Louis Baudouin, Book Review, *Civil Procedure in France*, by Peter Herzog with Martha Weser(1967), 45 Wash. L. & Rev. 231 (1970).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol45/iss1/15>

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# REVIEWS

## INTERNATIONAL PROCEDURE

Jean-Louis Baudouin\*

CIVIL PROCEDURE IN FRANCE. By Peter Herzog with the collaboration of Martha Weser. The Hague, Netherlands: Martinus Nijhoff. 1967. pp. 708.

The Columbia University School of Law project on international procedure has already published three books on foreign civil procedure.<sup>1</sup> *Civil Procedure in France* is a significant and most important addition to this series, for to my knowledge it constitutes the first comprehensive study of modern French civil procedure in the English language.

The book is divided into fifteen chapters, and the organization and presentation is very pragmatic and easy to follow. The first three chapters of the book are devoted to a historical introduction (chapter 1), an examination of professional legal assistance (chapter 2), and a review of the entire judicial organization (chapter 3). In the remainder of the book, the author describes and analyzes in a step by step fashion the development of a trial in the civil courts. This method of presentation is most valuable because it gives a clear and systematic picture of the whole process and makes it easy for the reader to obtain a general view of the functional aspects of French civil procedure. As stated in the preface, the manuscript was completed in 1965; and, to a certain degree, subsequent amendments and new legislation may affect certain statements and propositions.<sup>2</sup> However, the author has taken

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<sup>1</sup> H. SMITH, *INTERNATIONAL CO-OPERATION IN LITIGATION: EUROPE* (1965); M. CAPPELETTI AND J. M. PERILLO, *CIVIL PROCEDURE IN ITALY* (1965); R. B. GINSBURG AND A. BRUZELIUS, *CIVIL PROCEDURE IN SWEDEN* (1965); A book on civil procedure in Japan is presently in preparation under the direction of Professor D. F. Henderson and Judge Takaaki Hattori.

<sup>2</sup> See more particularly Décret no. 65-1106 of December 13, 1965; Décret no. 66-130 of March 4, 1966; Décret no. 66-443 of June 23, 1966; Décret no. 66-459 of June 28, 1966; Décret no. 66-776 of October 11, 1966; Décret no. 66-1060 of December 27, 1966; Décret no. 67-18 of January 5, 1967; Décret no. 67-114 of February 9, 1967; Décret no. 67-108 of February 10, 1967; Loi organique no. 67-130 of February 20, 1967; Décret no. 67-132 of February 20, 1967; Décrets no. 67-261 and 67-262 of March

into account the reform of 1965 concerning the procedure before the *Tribunal de Grande Instance* and the *Cour d'Appel*, time limitations, service of process and default judgments.<sup>3</sup>

The author has successfully attempted to analyze and explain the different concepts behind the French legal terminology; and he is to be commended for not trying as is often done, to literally translate the technical vocabulary where its translation by an English or common law term would have led to imprecision or false analogy. However, it would have facilitated the understanding of chapter 9 had the author at the outset defined or explained the word *cassation* as he did later in the same chapter.<sup>4</sup> The French *Cour de Cassation* is not a court of appeal as that term is used in the Anglo-American legal system. As the word *cassation* (meaning literally: to break) indicates, the French Supreme Court does not substitute its judgment for that of inferior courts, but it gives its opinion and remands for final adjudication to a court of appeal. Although the author apparently did not intend to elaborate on this subject, both lawyers and scholars would undoubtedly have preferred a more detailed examination of the role of this court in the development of the law instead of the rather brief explanation given in the introduction of the book and the conclusion of chapter 9.<sup>5</sup> Some references to the doctrinal work of French scholars concerning the authority of precedent and a short comparison with the Anglo-American theory of *stare decisis* would also have proven interesting and informative.

The general approach and discussion of the question of adjudicatory authority in chapter 4 and more particularly the attempt made to define the French concept of *jurisdiction* and distinguish it from the

29, 1967; Décret no. 67-269 of March 31, 1967; Décret no. 67-471 of June 20, 1967; Décret no. 67-472 of June 20, 1967; Loi no. 67-523 of July 3, 1967; Loi organique no. 67-618 of July 29, 1967; Décret no. 67-868 of October 2, 1967; Décret no. 67-901, 67-902 of October 12, 1967; Décret no. 67-978 of November 3, 1967; Décret no. 67-998 of November 17, 1967; Décret no. 67-1072 of December 7, 1967; Arrêté of December 7, 1967; Décret no. 67-1208 of December 22, 1967; Décret no. 67-1210 of December 22, 1967; Décret no. 67-1235 of December 22, 1967; Décret no. 67-1237 of December 22, 1967; Décret no. 67-1238 of January 12, 1968; Décret no. 68-364 of April 23, 1968; Décret no. 68-424 of May 8, 1968; Loi no. 68-696 of July 31, 1968. Moreover, new and recent changes in the organization of French law schools has substantially affected the description found in chapter of the book. P. HERZOG, CIVIL PROCEDURE IN FRANCE § 9 at 68 (1967) [hereinafter cited as HERZOG].

<sup>3</sup> HERZOG, at 365-75.

<sup>4</sup> HERZOG, § 9.23, at 461.

<sup>5</sup> HERZOG, § 1.32, at 55, and § 9.28, at 466.

concept of *compétence* will be of great value to the reader. However, the examination of the problem of the waiving jurisdictional objection<sup>6</sup> is somewhat superficial. Also, one would have preferred either a more sophisticated discussion or a detailed analysis or comparative study of the law and the case law concerning objections to territorial or material competence of the courts—especially since the 1958 reform.

The reference to case law and doctrine are generally sufficient to allow the reader to have an easy access to the main sources of law. This is, however, not entirely true in certain particular instances. The main doctrinal work cited in reference to questions concerning the substantive law aspects of civil procedure rules is A. Colin and H. Capitant, *Traité de Droit Civil* (rev. ed. L. J. Morandiere, vol. 1 1957, vol. 2 1959). Occasionally references are also made to M. Planiol and G. Ripert, *Traité de Droit Civil* (4th ed. 1951). Personally, I would have preferred to see included in the short bibliography<sup>7</sup> and in the reference on particular subjects citations to more modern texts, such as G. Ripert and J. Boulanger, *Traité de Droit Civil* (1956-57-58); H. Mazeaud, *Lecons de Droit Civil* (1959-60); G. Marty and P. Raynaud, *Droit Civil* (1961-1962). These references would have been particularly appreciated in regard to the law of evidence, specific performance and *astreintes*.<sup>8</sup>

The book is generally of excellent quality and will be of great value to the American and Canadian lawyer. In addition to providing a description and analysis of the French system of civil procedure, the book gives many practical details of the functional aspects of French civil procedure. For example, the costs of proceedings (amazingly low in certain cases by North American standards) are stated throughout the study.<sup>9</sup> Moreover, the compilation in the Appendix of a certain number of French procedural documents, translated into English, will aid the lawyer in understanding the differences between French and Anglo-American procedural terminology. Also useful to the practicing lawyer are the clear and high quality summaries given in the book on how French law would affect American legal interests in such situa-

<sup>6</sup> HERZOG, § 4.02, at 176.

<sup>7</sup> HERZOG, § 1.37, at 62.

<sup>8</sup> HERZOG, at 308-65, 556-64.

<sup>9</sup> HERZOG, at 87-88, 255, 535-42.

tions as: The effect of an American divorce in France,<sup>10</sup> arbitral awards,<sup>11</sup> and the right of an American citizen to sue or be sued in France.<sup>12</sup>

The material presentation is excellent and the book is almost completely free of misprints or similar errors.<sup>13</sup> The references to French cases are given in the American style and it should be pointed out that this is not the way they are cited in French where the names of the parties are usually omitted and only the name of the court, the date of judgment and the reference to the reports are given.<sup>14</sup>

In conclusion, Professor Herzog's book is a very significant contribution to the comparative study of civil procedure. Thoughtful scholarship, mastery of insight into French civil procedure, clarity of presentation and exposition, and the variety of information made available, are all qualities that can be found in *Civil Procedure in France* and that shall undoubtedly make it a very important contribution to an increased knowledge and improved understanding of the French legal system.

<sup>10</sup> HERZOG, at 599-600.

<sup>11</sup> HERZOG, at 600-08.

<sup>12</sup> HERZOG, at 214-16.

<sup>13</sup> The following minor errors do appear in the book: "Pipin" instead of "Pépin" at 3; footnote 265 on page 112 is missing; Preuve preconstitue instead of preuve preconstitue at 318.

<sup>14</sup> For example, *Therel v. Garét*, Cass. Civ. May 13, 1958 (1958) D.J. 446, would be cited in France as Cass. Civ. May 13, 1958-D-58-446.