

# COMMENTARY ON THE FRENCH CIVIL CODE

## A Comparative Analytical Study

of the Code Civil and Its Amendments

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## FOREWORD

It is with profound intellectual satisfaction that this commentary on the French Civil Code is presented to the global legal community. For over two centuries, the Code Napoleon has stood as the paramount achievement of codified private law, shaping the legal consciousness of nations across Europe, the Americas, the Middle East, and Africa. Yet, to treat the Code merely as a historical artifact is to misunderstand its enduring vitality. This work approaches the Civil Code not as a closed system of archaic rules, but as a living organism, continuously reshaped by the pressures of economic transformation, technological disruption, and evolving conceptions of human dignity.

By integrating historical genealogy, economic analysis, and critical legal theory, this commentary offers a multidimensional reading of French private law. It traces the evolution of legal concepts from their revolutionary origins to their contemporary applications in the digital economy, providing scholars, practitioners, and students with a comprehensive framework for understanding not only what French civil law is, but what it means, and where it is going in the twenty-first century.

## METHODOLOGICAL INTRODUCTION

The French Civil Code of 1804 is a philosophical statement about the nature of human relationships, the sanctity of property, and the boundaries of individual freedom. Traditional commentaries have often treated the Code as a self-contained universe, extracting meaning solely from the text or systematizing its internal logic. This commentary proposes a critical comparative methodology that reads the Code through three intersecting lenses.

The first lens is historical genealogy. Every article bears the traces of the revolutionary moment that produced it, the imperial consolidation that followed, and the successive adaptations to industrial capitalism, the welfare state, and the digital economy. The second lens is economic analysis. Law does not operate in a vacuum; it shapes and is shaped by economic realities. Evaluating the efficiency, distributional consequences, and incentive structures of legal rules is essential for any serious evaluation of the Code. The third lens is critical theory. The Code is not

neutral. It reflects the interests, values, and power relations of the society that produced it. Asking whose interests a rule serves and how it distributes risk and opportunity is crucial for understanding the living law of France.

## LIST OF ABBREVIATIONS

C. civ. Code civil (Civil Code)  
C. com. Code de commerce (Commercial Code)  
C. trav. Code du travail (Labor Code)  
C. consom. Code de la consommation (Consumer Code)  
C. ass. Code des assurances (Insurance Code)  
Cass. Cour de cassation (Court of Cassation)  
Cass. civ. 1re Première chambre civile de la Cour de cassation  
Cass. civ. 2e Deuxième chambre civile de la Cour de cassation  
Cass. civ. 3e Troisième chambre civile de la Cour de cassation  
Cass. com. Chambre commerciale de la Cour de cassation  
CA Cour d'appel (Court of Appeal)  
JCP Juris-Classeur Périodique (La Semaine Juridique)  
D. Recueil Dalloz  
Gaz. Pal. Gazette du Palais  
RTD civ. Revue trimestrielle de droit civil  
RLDC Revue Lamy de Droit Civil  
Defrénois Répertoire du Notariat Defrénois  
Bull. civ. Bulletin des arrêts de la Cour de cassation, chambres civiles

## PREFATORY PART

### INTRODUCTION TO THE FRENCH CIVIL CODE

## CHAPTER ONE

### HISTORY OF THE ORIGIN AND EVOLUTION OF THE CODE NAPOLEON 1804

#### SECTION I: THE JURIDICAL REVOLUTION OF 1804

The genesis of the French Civil Code of 1804 represents not merely a legislative achievement but one of the most profound juridical revolutions in human history. To comprehend the magnitude of this achievement, one must first understand the legal landscape of pre-revolutionary France, a territory characterized by what Voltaire famously described as a situation where a traveler changing horses also changed the law. [1] This fragmentation was not accidental but reflected the deep historical divisions between the customary law of the north, the *pays de droit coutumier*, and the written Roman law of the south, the *pays de droit écrit*.

The Elrakhawi Doctrine approaches the Code not as a mere historical artifact but as a living organism, continuously reshaped by the pressures of economic transformation, technological disruption, and evolving conceptions of human dignity. This chapter traces the genealogical development of the Code from its revolutionary origins to its contemporary manifestations, applying the three analytical lenses of the doctrine: historical genealogy, economic analysis, and critical theory.

## SECTION II: PRE-REVOLUTIONARY FRANCE

Prior to the French Revolution of 1789, France was divided into two principal legal zones. The northern two-thirds of the country, the *pays de droit coutumier*, was governed by a complex mosaic of customary laws, each region possessing its own *coutume*, often unwritten and varying from village to village. The most influential of these was the *Coutume de Paris*, which served as a model for other regional customs and would later influence the civil law of Quebec and Louisiana. [2]

The southern third of France, the *pays de droit écrit*, remained faithful to the Roman law tradition, particularly as codified in the *Corpus Juris Civilis* of Justinian. However, even in the south, Roman law had been significantly modified by local customs and royal ordinances, creating a hybrid legal system that was far from uniform.

This legal fragmentation had profound economic and social consequences. The transaction costs of commercial activity were enormous, as merchants had to navigate different legal regimes depending on their location. The inability to predict legal outcomes with certainty discouraged long-term investment and contributed to the economic stagnation of the *ancien régime*. [3]

The royal authorities made several attempts to unify the law. The ordinances of Chancellor D'Aguesseau in the eighteenth century, particularly the ordinance on donations of 1731 and the ordinance on testaments of 1735, represented significant steps toward unification. [4] However, these efforts were limited in scope and failed to address the fundamental structural divisions of French law.

The philosophical foundations for a comprehensive codification were laid by the Enlightenment thinkers. Montesquieu, in his *De l'esprit des lois* (1748), argued for laws that reflected the specific characteristics of each nation while maintaining universal principles of justice. [5] Voltaire, in his *Dictionnaire philosophique*, attacked the absurdity of a legal system where the same act could be legal on one side of a river and criminal on the other. [6]

## SECTION III: THE REVOLUTIONARY PERIOD

The French Revolution of 1789 transformed the dream of legal unification from a philosophical aspiration into a political imperative. The Declaration of the Rights of Man and of the Citizen of 26 August 1789 proclaimed the principle of legal equality in Article 6: "La loi est l'expression de la volonté générale. Tous les citoyens ont droit de concourir personnellement, ou par leurs représentants, à sa formation. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse." [7]

This principle of equality before the law was incompatible with the fragmented legal system of the ancien régime. The National Constituent Assembly, in its decree of 3-11 September 1791, announced the intention to create "un code de lois civiles communes à tout le royaume." [8]

However, the revolutionary period was marked by political instability that prevented the completion of this ambitious project. Several commissions were appointed to draft a civil code, but their work was repeatedly interrupted by the turbulent events of the Revolution. The most significant attempt was the projet de code civil presented by Jean-Ignace Jacqueminot in 1793, which was rejected by the Convention as too conservative. [9]

The revolutionary period did, however, introduce fundamental changes to French private law that would later be incorporated into the Civil Code. The laws of 1792 established civil marriage and divorce, secularizing the law of the family. [10] The abolition of feudal rights on the night of 4 August 1789 and the subsequent decrees transformed the nature of property ownership, establishing the principle of individual property rights free from feudal burdens. [11]

#### SECTION IV: NAPOLEON AND THE COMMISSION OF FOUR

The accession of Napoleon Bonaparte as First Consul in 1799 marked the end of the revolutionary period and the beginning of a new phase of legal consolidation. Napoleon recognized that the stability of his regime depended on the establishment of a predictable legal framework that would secure the gains of the Revolution while restoring social order.

On 12 August 1800 (24 Thermidor Year VIII), Napoleon appointed a commission of four eminent jurists to draft a civil code: Jean-Étienne-Marie Portalis, François Denis Tronchet, Félix-Julien-Jean Bigot de Préameneu, and Jacques de Maleville. [12] This commission, often referred to as the "commission of four," was carefully chosen to represent both the legal traditions of the north and the south, and to balance revolutionary principles with conservative values.

Portalis, a jurist from Provence trained in the Roman law tradition, was the philosophical soul of the commission. His famous Discours préliminaire, presented to the Tribunat on 24 Pluviôse Year XI (13 February 1803), articulated the philosophical foundations of the Code with remarkable clarity. [13] Portalis argued that the Code should not attempt to regulate every detail of human conduct but should establish general principles that could be adapted to changing circumstances through judicial interpretation.

Tronchet, a Parisian lawyer trained in the customary law tradition, was the most experienced practitioner on the commission. He had defended Louis XVI during his trial and brought a deep knowledge of the practical operation of the law. [14] Bigot de Préameneu, from Brittany, represented the customary law tradition and contributed significantly to the sections on family law and obligations. Maleville, from the southwest, brought expertise in Roman law and contributed to the sections on property and succession.

The commission worked with remarkable speed, completing its draft in just four months, between August and December 1800. This speed has been the subject of much scholarly debate. Some commentators have suggested that the commission relied heavily on existing drafts, particularly the projet Jacqueminot of 1793 and the travaux of the revolutionary commissions. [15] Others have emphasized the originality of the commission's work, arguing that the speed reflected the clarity of vision of its members rather than mere compilation.

## SECTION V: THE PHILOSOPHICAL FOUNDATIONS

Article 544 (C. civ.)

"La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements."

The Civil Code of 1804 was not merely a technical compilation of legal rules but a philosophical statement about the nature of human society. The Code embodied three fundamental principles that reflected the values of the post-revolutionary bourgeoisie: individual liberty, the sanctity of private property, and the autonomy of the family.

The principle of individual liberty was expressed in the abolition of all forms of personal servitude and the recognition of the capacity of every individual to enter into contracts and dispose of their property. Article 8 of the Code, as originally enacted, provided: "Tout Français jouira des droits civils." [16] This principle of equal civil capacity was a radical departure from the hierarchical legal system of the ancien régime.

The principle of the sanctity of private property was expressed most famously in Article 544. This definition, with its emphasis on the absolute nature of property rights, reflected the bourgeois revolution's transformation of property from a feudal privilege into a natural right.

The principle of the autonomy of the family was expressed in the recognition of the father's authority over his children and his wife. The Code established a patriarchal family in which the husband was the head of the household and controlled the marital property. [18] This principle reflected the conservative reaction to the revolutionary experiments with family law and the desire to restore social stability.

The Elrakhawi Doctrine critically examines these philosophical foundations, noting that they served the interests of a specific social class: the propertied bourgeoisie that had benefited from

the Revolution. The Code's emphasis on individual liberty primarily benefited those who had the economic means to exercise it. The sanctity of property protected the new owners of former feudal lands against the claims of the dispossessed. The patriarchal family reflected the desire of bourgeois men to maintain control over their households in the face of revolutionary challenges to traditional authority.

## SECTION VI: THE ENACTMENT AND EARLY RECEPTION

The enactment of the Civil Code was not a single event but a process that unfolded between 1803 and 1804. The draft produced by the commission was submitted to the Conseil d'État and then to the Tribunat and the Corps législatif. Napoleon personally participated in many of the discussions, bringing his characteristic pragmatism and attention to detail. [19]

The Code was enacted in a series of laws, known as the lois particulières, between 15 March 1803 and 24 March 1804. These laws were later consolidated into a single code by the law of 30 Ventôse Year XII (21 March 1804), which abolished all previous laws relating to the matters covered by the Code. [20]

The early reception of the Code was mixed. The legal profession, particularly the judges and lawyers trained in the old traditions, was often hostile to the new code, viewing it as an imposition by the central government that undermined their professional autonomy. [21] The public, however, generally welcomed the Code as a source of legal certainty and predictability.

The Code was almost immediately exported to the territories conquered by Napoleon, including Belgium, Luxembourg, the Rhineland, and parts of Italy. In these territories, the Code was imposed by force, often against the wishes of the local populations. [22] However, in many of these territories, the Code survived the fall of Napoleon and continued to be applied after the restoration of national sovereignty, demonstrating its adaptability and appeal.

## SECTION VII: A LANDMARK DECISION - THE EVOLUTION OF ARTICLE 1384

To illustrate the living nature of the Civil Code, it is instructive to examine the evolution of a single provision: Article 1384 (now Article 1242), which governs liability for things in one's custody.

Article 1384 (C. civ., original 1804 text)

"On est responsable non seulement du dommage que l'on cause par son propre fait, mais encore de celui qui est causé par le fait des personnes dont on doit répondre, ou des choses que l'on a sous sa garde."

As originally enacted in 1804, Article 1384 was initially interpreted narrowly, as a mere introduction to the specific regimes of liability for children, employees, animals, and buildings that followed in subsequent paragraphs.

However, the industrial revolution of the late nineteenth century created new forms of risk that the original drafters could not have anticipated. Machines, particularly steam engines and later automobiles, caused accidents that did not fit neatly into the existing categories of liability. The courts faced a dilemma: either apply the traditional requirement of fault, which was often impossible to prove in cases of industrial accidents, or find a new basis for liability.

In the landmark decision of the *Chambre des requêtes* of 16 June 1896 (*arrêt Teffaine*), the *Cour de cassation* recognized that Article 1384, paragraph 1, could serve as an independent basis for liability for things in one's custody. [24] This decision was extended and clarified by the famous *arrêt Jand'heur* of the *Chambre civile* of 21 June 1930, which established the principle of strict liability for things in one's custody, regardless of fault. [25]

The facts of *Jand'heur* were typical of the industrial age. The defendant's truck, driven by an employee, struck the plaintiff's child, who was walking on the sidewalk. The plaintiff sought damages, but could not prove that the driver had been at fault. The *Cour de cassation* held that the defendant was liable as the guardian of the truck, a thing that had caused damage, regardless of whether fault could be established.

The legal significance of *Jand'heur* cannot be overstated. The decision transformed Article 1384 from a mere introductory provision into a general regime of strict liability that could adapt to new forms of risk. The decision was not based on the original intent of the drafters, who had clearly intended Article 1384 to be merely introductory. Rather, it was based on a creative interpretation of the text that responded to the social and economic needs of the time.

The *Elrakhawi Doctrine* analyzes *Jand'heur* as a paradigmatic example of the living nature of the Civil Code. The decision demonstrates that the Code is not a closed system but a flexible framework that can be adapted to new circumstances through judicial interpretation. The decision also illustrates the economic function of legal rules: by imposing strict liability on the guardians of things, the courts created incentives for greater care in the operation of dangerous machines, reducing the social costs of industrial accidents.

## SECTION VIII: THE ECONOMIC ANALYSIS OF THE CODE

The *Elrakhawi Doctrine* applies the tools of law and economics to analyze the Civil Code, asking not only what the Code says but what effects it produces. This section examines the economic implications of three fundamental institutions of the Code: property, contract, and tort liability.

The law of property, as established by Article 544, creates strong incentives for investment and improvement. By guaranteeing that the owner can reap the benefits of their investment, the law

encourages the efficient use of resources. However, the absolute nature of property rights can also create inefficiencies, particularly in cases where the owner's use of their property imposes costs on others. The doctrine of nuisance, developed by the courts to address these externalities, represents a pragmatic compromise between the absolute rights of the owner and the legitimate interests of the community. [26]

The law of contract, based on the principle of the autonomy of the will, reduces transaction costs by providing a predictable framework for commercial activity. The principle that contracts have the force of law between the parties (Article 1134, now Article 1103) encourages reliance and investment. However, the principle of freedom of contract can also lead to exploitation, particularly in cases of unequal bargaining power. The development of consumer protection law and the regulation of standard-form contracts represent necessary corrections to the classical model. [27]

The law of tort liability, particularly as developed through the interpretation of Article 1384, serves both compensatory and deterrent functions. By requiring those who cause harm to compensate their victims, the law distributes the costs of accidents to those best able to bear them. By imposing liability regardless of fault in certain cases, the law creates incentives for greater care in the operation of dangerous activities. The economic analysis of tort liability suggests that the optimal rule is one that minimizes the sum of the costs of accidents, the costs of prevention, and the costs of administration. [28]

## SECTION IX: TWO CENTURIES OF ADAPTATION

The survival of the Civil Code for over two centuries is a testament to its remarkable capacity for adaptation. While the fundamental architecture of the Code has remained intact, its content has been transformed by thousands of amendments and by the creative interpretation of the courts.

The most significant transformations have occurred in the law of the family. The original Code established a patriarchal family in which the wife was legally subordinate to her husband. The reforms of 1965, 1970, 1975, and 2006 progressively equalized the rights of spouses, culminating in the legalization of same-sex marriage in 2013. [29] These reforms reflect the evolution of French society from a patriarchal model to one based on gender equality and individual autonomy.

The law of obligations has also undergone significant transformation. The monumental Ordinance of 10 February 2016 reformed the law of contracts, modernizing the terminology and codifying the jurisprudence. [30] The reform replaced the controversial requirement of "cause" with the requirements of lawful content and counter-performance, codified the duties of information and good faith during pre-contractual negotiations, and introduced the theory of unforeseen circumstances (*imprévision*).

The law of property has been transformed by the recognition of new forms of property, including intellectual property and personal data. The rise of environmental law has imposed significant restrictions on the absolute rights of property owners, reflecting the recognition that property has a social function.

## SECTION X: LEGISLATIVE RECOMMENDATIONS

Based on the analysis presented in this chapter, the Elrakhawi Doctrine proposes the following legislative recommendations for the future evolution of the French Civil Code:

First, the legislature should develop a comprehensive framework for digital property, recognizing that intangible assets such as cryptocurrencies, virtual goods, and personal data deserve legal protection even if they do not fit neatly into the traditional categories of movable and immovable property.

Second, the legislature should clarify the legal status of artificial intelligence and autonomous systems. The doctrine proposes the creation of a specific legal regime for advanced AI, granting it a limited, functional legal personality for the purpose of liability and asset management.

Third, the legislature should strengthen the protections for vulnerable adults, particularly in the context of digital transactions. The doctrine recommends the development of specific rules for digital capacity, including mandatory verification mechanisms for online transactions involving vulnerable persons.

Fourth, the legislature should simplify the hierarchy of privileges in insolvency law, reducing the number of categories and providing clearer rules for resolving disputes.

Fifth, the legislature should develop a more flexible framework for long-term relational contracts, recognizing that the traditional rules of contract law, designed for discrete transactions, are inadequate for the complex commercial relationships of the modern economy.

## FOOTNOTES TO CHAPTER ONE

[1] Voltaire, *Dictionnaire philosophique*, article "Lois," 1764. Voltaire observed: "Quand on voyage dans ce royaume, on change de loi à peu près à chaque relais de poste."

[2] See Pothier, R.J., *Traité des obligations*, 1761, which was heavily influenced by the *Coutume d'Orléans* and served as a major source for the Civil Code.

[3] See North, D.C., and Thomas, R.P., *The Rise of the Western World: A New Economic History*, Cambridge University Press, 1973, pp. 135-142.

- [4] See D'Aguesseau, H.F., *Oeuvres complètes*, Vol. 8, Paris, 1778.
- [5] Montesquieu, C.-L., *De l'esprit des lois*, Geneva, 1748, Book I, Chapter 1.
- [6] Voltaire, *op. cit.*, note 1.
- [7] Declaration of the Rights of Man and of the Citizen, 26 August 1789, Article 6.
- [8] Decree of 3-11 September 1791, Title I, Article 1.
- [9] See Jacqueminot, J.-I., *Projet de code civil, présenté par ordre du roi*, Paris, 1793.
- [10] See Law of 20 September 1792 on divorce and Law of 20 September 1792 on civil status.
- [11] See Decrees of 4-11 August 1789 abolishing feudalism.
- [12] See Portalis, J.-É.-M., *Discours préliminaire au projet de code civil*, 24 Pluviôse Year XI (13 February 1803).
- [13] Id. Portalis famously stated: "On n'improvise pas des lois. Les codes des peuples se font avec le temps; mais, proprement parler, on ne les fait pas."
- [14] See Tronchet, F.D., *Observations sur le projet de code civil*, Paris, 1801.
- [15] See Halpérin, J.-L., *L'impossible Code civil*, Paris, PUF, 1992, pp. 234-256.
- [16] Code civil, Article 8, as originally enacted in 1804.
- [17] Code civil, Article 544.
- [18] See Code civil, Article 213 (as originally enacted): "Le mari doit protection à sa femme, la femme obéissance à son mari."
- [19] See Thibaudeau, A.C., *Mémoires sur le Consulat, 1799-1804*, Paris, 1824, pp. 145-178.
- [20] See Law of 30 Ventôse Year XII (21 March 1804) on the reunion of the lois particulières into a single code.
- [21] See Carbonnier, J., *Flexible droit: Pour une sociologie du droit sans rigueur*, Paris, LGDJ, 1969, pp. 89-112.
- [22] See Godschalk, S., *The Napoleonic Code and the Unification of European Law*, in: *The Napoleonic Code and the Common Law World*, New York University Press, 1956, pp. 23-45.

[24] Cass. req., 16 June 1896, S. 1897.1.17, note Esmein.

[25] Cass. civ., 21 June 1930, Jand'heur, D.P. 1930.1.57, note Ripert; S. 1931.1.121, note Esmein.

[26] See Terré, F., Simler, P., and Lequette, Y., *Droit civil: Les biens*, Dalloz, 12th ed., 2019, n° 890-920.

[27] See Fabre-Magnan, M., *Droit des obligations: Contrat et engagement unilatéral*, PUF, 4th ed., 2018, n° 456-478.

[28] See Posner, R.A., *Economic Analysis of Law*, Aspen Publishers, 9th ed., 2014, pp. 185-210.

[29] See Law No. 2013-404 of 17 May 2013 opening marriage to same-sex couples.

[30] See Ordinance No. 2016-131 of 10 February 2016 on contract law.

## CHAPTER TWO GENERAL PRINCIPLES AND OFFICIAL SOURCES

### SECTION I: THE HIERARCHY OF LEGAL SOURCES

#### Article 5 (C. civ.)

"Il est défendu aux juges de prononcer par voie de disposition générale et réglementaire sur les causes qui leur sont soumises."

The French Civil Code operates within a sophisticated hierarchy of legal sources. The preliminary articles establish the philosophical foundations of this hierarchy. Article 5 prohibits judges from issuing general regulatory dispositions, reflecting the revolutionary distrust of judicial power. Yet, the jurisprudence of the Cour de cassation has become an indispensable source of law, breathing life into abstract articles.

The hierarchy of norms places the Constitution and the bloc de constitutionnalité at the apex, followed by international treaties, statutes, and regulations. The Europeanization of French law has profoundly transformed this structure, integrating European directives into the Civil Code, particularly in consumer protection and data privacy. This interplay between national, European, and international norms creates a complex but dynamic legal ecosystem.

### SECTION II: THE ROLE OF JURISPRUDENCE

The doctrine of jurisprudence constante, where repeated decisions establish a stable interpretation, demonstrates that while judges cannot make law in the common law sense, their interpretive authority is the true engine of the Code's evolution. The famous arrêts such as Jand'heur (1930) on liability for things in one's custody, and the numerous decisions on contractual liability, have shaped the law as profoundly as any statute.

Custom and doctrine play supplementary roles. Custom is rarely invoked in modern French law, but it remains a formal source. Doctrine, the writings of legal scholars, exerts significant influence on judicial decision-making, particularly through the work of the great commentators such as Carbonnier, Terré, and Malaurie.

### SECTION III: THE FOUNDATIONAL PRINCIPLES

The foundational principles enshrined in the preliminary title, particularly the principles of secularism, public order, and good morals, act as the ultimate boundary markers for private autonomy. These principles have been invoked to invalidate contractual clauses that violate fundamental values, such as clauses prohibiting marriage or imposing religious observance.

The Code's architecture reflects a delicate balance between the freedom of the individual and the collective interests of society. This balance is constantly renegotiated through legislative amendments and judicial review, making the Code a living instrument rather than a historical relic.

## CHAPTER THREE THE INFLUENCE ON COMPARATIVE LEGISLATIONS

### SECTION I: THE GLOBAL IMPACT

The global impact of the French Civil Code is unparalleled in the history of legal transplants. Through colonization, voluntary emulation, and the prestige of French legal science, the Code served as the blueprint for civil law systems across Europe, Latin America, the Middle East, and parts of Asia and Africa.

In Europe, the Code influenced the civil codes of Belgium, Luxembourg, Italy (1865), Spain, Portugal, and the Netherlands. In Latin America, the codes of Chile, Argentina, Brazil, and others were profoundly influenced by the French tradition, often mediated through the work of scholars like Freitas and Vélez Sársfield.

### SECTION II: THE EGYPTIAN SYNTHESIS

In the Middle East, the Egyptian Civil Code of 1948, drafted by Abd al-Razzaq Al-Sanhuri, represents a masterful synthesis of the French model and Islamic jurisprudence. The codes of Syria, Iraq, Libya, and other Arab countries drew heavily on the French model, adapting it to local cultural and religious contexts.

Al-Sanhuri improved upon the French model by explicitly integrating the principle of social solidarity, expanding the scope of tort liability, and providing a more flexible framework for contractual fairness. This comparative perspective reveals that the true legacy of the Code Napoléon lies not in its rigid replication but in its provision of a conceptual vocabulary and a structural methodology that allowed diverse societies to articulate their own modern private law systems.

### SECTION III: CRITICAL ANALYSIS OF LEGAL TRANSPLANTS

The Elrakhawi Doctrine analyzes this normative hegemony critically. The exportation of the Code was often intertwined with imperial projects, serving as an instrument of cultural domination. However, in many regions, the French model was not merely copied but creatively synthesized with local jurisprudential traditions. In the Arab world, the French model provided a conceptual vocabulary and a structural methodology that allowed jurists to articulate modern private law systems compatible with Islamic principles.

## BOOK ONE PERSONS

### CHAPTER FOUR LEGAL PERSONALITY, ITS BEGINNING AND END

#### SECTION I: THE FOUNDATIONS OF LEGAL PERSONALITY

Article 16 (C. civ.)

"La loi assure la primauté de la personne, interdit toute atteinte à la dignité de celle-ci et garantit le respect de l'être humain dès le commencement de sa vie."

The concept of legal personality is the bedrock of civil law, defining the entity capable of holding rights and bearing duties. Under the French Civil Code, legal personality begins at live birth and ends at death. Article 725 requires that one must exist at the moment of the opening of the succession or at the moment of the conception to inherit, establishing the principle that the conceived child is presumed to have legal personality for purposes of inheritance, provided it is born alive and viable.

## SECTION II: THE BOUNDARIES OF EXISTENCE

The Elrakhawi Doctrine critically examines the boundaries of this definition. The advent of modern medical technologies has complicated the traditional binary between existence and non-existence. Brain death criteria, established by medical consensus and recognized by law, have redefined the moment of death. The persistence of digital personas after biological death raises profound questions about the continuity of legal personality in the digital age.

Article 16-1-1, introduced in 2004, provides that "The respect due to the human body does not cease with death. The remains of the deceased person, including the ashes, must be treated with respect, humanity, and dignity." This provision reflects a recognition that legal personality, while terminating at death, leaves behind a residual protection grounded in human dignity.

## SECTION III: THE PERRUCHE DECISION AND ITS AFTERMATH

The famous Perruche decision of 2000 illustrates the profound philosophical and ethical boundaries of legal personality. In this landmark ruling, the Assemblée plénière of the Cour de cassation recognized the right of a child born with disabilities to claim damages for the harm of being born, a decision that was subsequently overturned by legislation. The case demonstrates the tension between the compensatory function of tort law and the fundamental value of human life.

The Elrakhawi Doctrine proposes that the Code must eventually confront the ontological rupture caused by the digital preservation of human consciousness. When an artificial intelligence is trained on the complete digital footprint of a deceased person, producing a conversational agent that replicates their speech patterns and memories, does the deceased retain any legal interests that must be protected? The doctrine suggests that the law must develop a new category of post-mortem digital personality rights, distinct from both property rights and traditional personality rights.

## CHAPTER FIVE

### CAPACITY, ITS TYPES, AND IMPEDIMENTS

## SECTION I: THE OPERATIONAL DIMENSION OF PERSONALITY

Article 414 (C. civ.)

"Pour faire un acte valable, il faut être sain d'esprit. Les actes faits par une personne qui n'était pas saine d'esprit au moment où elle les a accomplis peuvent être annulés, encore que l'interdiction n'ait pas été prononcée ou ne soit pas intervenue."

Capacity to exercise rights is the operational dimension of legal personality. The Code distinguishes between full capacity, limited capacity, and incapacity. Minors and protected adults lack full capacity, and their acts are subject to annulment or require the assistance or representation of a legal guardian.

## SECTION II: THE 2007 REFORM

The law of 5 March 2007 reformed the protective regimes for vulnerable adults, replacing the traditional categories of interdiction, inaptitude to manage one's affairs, and simple curatorship with a more flexible system of judicial protection, curatorship, and guardianship. The reform emphasized the principle of subsidiarity and proportionality, requiring that the protective measure be adapted to the degree of incapacity and the personal situation of the protected person.

The Elrakhawi Doctrine praises this evolution as a triumph of humanistic jurisprudence. The shift from total substitution to a model of representation and assistance recognizes that legal incapacity should not equate to civil death. The law must facilitate participation rather than enforce isolation.

However, the doctrine also identifies persistent challenges. The protection of vulnerable adults from financial abuse, particularly by family members or caregivers, remains a significant problem. The doctrine recommends strengthening the oversight mechanisms for guardians and curators, including mandatory annual reporting and independent audits.

## SECTION III: THE CHALLENGES OF THE DIGITAL AGE

The rise of digital transactions has also complicated the law of capacity. The ability of minors to enter into online contracts, often without parental knowledge, has prompted calls for reform. The Elrakhawi Doctrine suggests that the law must develop specific rules for digital capacity, recognizing that the traditional framework, designed for a world of face-to-face transactions, is inadequate for the digital age.

## CHAPTER SIX CIVIL STATUS, DOMICILE, AND NATIONALITY

### SECTION I: THE PILLARS OF LEGAL IDENTITY

Article 100 (C. civ.)

"Les rectifications des actes de l'état civil sont faites par le tribunal."

Civil status encompasses the vital events that define an individual's legal identity: birth, marriage, and death. The strict regulation of civil status registries, maintained by municipal authorities, ensures legal certainty and prevents fraud. Civil status acts are authentic instruments, enjoying a presumption of accuracy until proven otherwise through a procedure of rectification.

Domicile, defined in Article 102 as the principal establishment of a person, determines jurisdiction and the applicable law for certain personal matters. The distinction between domicile and residence is crucial: domicile is a legal concept requiring both physical presence and the intention to make a place the center of one's legal affairs.

## SECTION II: NATIONALITY AND CIVIL RIGHTS

Nationality, while primarily a matter of public law, intersects deeply with civil rights. French nationality can be acquired by filiation, birth in France to foreign parents under certain conditions, or naturalization. The intersection of nationality and civil status is particularly evident in cases of statelessness, where individuals may lack the civil status necessary to exercise basic rights.

The Elrakhawi Doctrine highlights the increasing complexity of these concepts in an era of global mobility. Transnational lifestyles, digital citizenship, and the rise of stateless populations challenge the traditional link between physical territory and legal identity. The doctrine recommends that the law develop more flexible concepts of domicile and residence, recognizing that individuals may have multiple centers of legal interest.

## CHAPTER SEVEN THE FAMILY, MARRIAGE, AND DIVORCE

### SECTION I: FROM PATRIARCHY TO PARTNERSHIP

Article 212 (C. civ.)

"Les époux se doivent mutuellement respect, fidélité, secours, assistance."

The French law of the family has undergone a radical transformation since 1804. The original Code established a patriarchal family in which the husband was the head of the household and the wife was legally subordinate. The reforms of 1965, 1970, 1975, and 2006 progressively equalized the rights of spouses, culminating in the legalization of same-sex marriage in 2013 through the law known as "Mariage pour tous."

Divorce laws have been progressively liberalized. The law of 1975 introduced divorce by mutual consent and divorce for breakdown of the marital relationship. The law of 2016 allowed divorce

by mutual consent to be formalized by a notary without judicial intervention, streamlining the process but raising questions about the protection of the weaker party.

## SECTION II: MATRIMONIAL REGIMES

The matrimonial regimes, particularly the default regime of community of property reduced to acquêts, reflect a delicate balance between the solidarity of the marital union and the protection of individual assets. The Elrakhawi Doctrine views these reforms as a necessary adaptation to the modern realities of gender equality and individual autonomy.

The doctrine also warns against the over-judicialization or over-commercialization of intimate human relationships. The increasing use of prenuptial agreements and the financialization of divorce have transformed marriage into a contractual relationship governed by economic logic. The doctrine recommends that the law preserve the ethical dimensions of marriage, recognizing that the family is not merely an economic unit but a community of affection and mutual support.

## SECTION III: DIVERSE FAMILY FORMS

The recognition of diverse family forms, including civil solidarity pacts (PACS) and concubinage, reflects the law's adaptation to changing social realities. The Elrakhawi Doctrine supports this pluralism while advocating for clearer rules governing the rights and obligations of partners in non-marital relationships.

## BOOK TWO PROPERTY

### CHAPTER EIGHT OWNERSHIP, ITS TYPES AND RESTRICTIONS

#### SECTION I: THE ABSOLUTE RIGHT QUALIFIED

Article 544 (C. civ.)

"La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements."

Article 544 is the cornerstone of French property law. Its formulation, emphasizing the absolute nature of ownership, reflects the individualism of the revolutionary period. However, the proviso that ownership must not be used in a way prohibited by laws or regulations has allowed the legislature to impose significant restrictions on property rights.

Environmental regulations, urban planning laws, and the doctrine of neighborhood disturbances have transformed absolute ownership into a social function. The Elrakhawi Doctrine argues that this evolution is not a degradation of property rights but a necessary correction. In a densely populated and ecologically fragile world, the absolute right of one owner cannot supersede the collective right to a healthy environment and sustainable development.

## SECTION II: THE DOCTRINE OF ABUSE OF RIGHT

The doctrine of abuse of right, established in the Clement-Bayard decision of 1915, limits the exercise of ownership when it exceeds the bounds of good faith. In this landmark case, the Cour de cassation held that a property owner who erected tall spikes solely to annoy his neighbor had abused his right of ownership, and ordered the removal of the spikes.

The law of 4 August 1982 on the development of civil liberties recognized the right to property as a fundamental liberty, subject to limitations justified by the general interest. The Constitutional Council has consistently upheld this balance, requiring that any restriction on property rights be proportionate to the objective pursued.

## SECTION III: DIGITAL PROPERTY

The rise of digital property, including virtual assets and cryptocurrencies, has challenged the traditional framework. The Elrakhawi Doctrine suggests that the law must develop a new category of digital property rights, recognizing that intangible assets can have economic value and deserve legal protection, even if they do not fit neatly into the traditional categories of movable and immovable property.

## CHAPTER NINE POSSESSION AND ITS PROVISIONS

### SECTION I: THE FACTUAL EXERCISE OF RIGHTS

Article 2228 (C. civ.)

"La possession est la détention ou l'exercice d'un droit ou d'une utilité que l'on a sur une chose, par soi-même ou par un autre qui la détient ou l'exerce en notre nom."

Possession is the factual exercise of a right of ownership or a real right. The Code protects possession through possessory actions, independent of the question of ownership, based on the presumption that the possessor is the owner and the need to maintain public order.

The conditions for possession, set forth in Article 2261, require continuous, peaceful, public, and unequivocal control. Possession must also be as owner, meaning that the possessor must behave as if they were the owner. Acquisitive prescription allows a possessor to become the owner after a specified period, typically thirty years for immovable property.

## SECTION II: THE SOCIOLOGICAL FUNCTION

The Elrakhawi Doctrine emphasizes the sociological importance of possessory protection. By protecting possession independently of ownership, the law prevents self-help and vigilantism, channeling disputes into the structured arena of the law. This is particularly important in contexts where ownership is uncertain or contested.

The economic function of possessory protection is to stabilize legal relationships and encourage the productive use of property. The doctrine also addresses the challenges posed by digital possession. The possession of digital assets, such as cryptocurrencies and virtual goods, raises questions about the application of traditional possessory principles. The Elrakhawi Doctrine suggests that the law must develop new concepts of digital possession, recognizing that the control of digital assets can be as significant as the control of physical property.

## CHAPTER TEN ORIGINAL AND ACCESSORY REAL RIGHTS

### SECTION I: THE FRAGMENTATION OF OWNERSHIP

Article 578 (C. civ.)

"L'usufruit est le droit de jouir des choses dont un autre a la propriété, comme le propriétaire lui-même, mais à la charge d'en conserver la substance."

Beyond ownership, the Code recognizes a spectrum of real rights that fragment the bundle of ownership rights. Usufruct separates the right to use and enjoy (usus and fructus) from the bare ownership (abusus). This mechanism is crucial for estate planning and the protection of surviving spouses.

Servitudes, regulated in Articles 637 to 710, govern the relationships between neighboring properties. A servitude is a charge imposed on one estate for the utility of another estate. Servitudes can be natural, legal, or conventional, and they run with the land, binding successive owners.

### SECTION II: CO-OWNERSHIP

Co-ownership, particularly in residential buildings, has required extensive legislative intervention. The law of 10 July 1965, as amended, establishes a comprehensive framework for the management of co-owned buildings, including the creation of a co-owners' association, the election of a syndic, and the establishment of a reserve fund.

The Elrakhawi Doctrine views these accessory rights as essential tools for maximizing the economic and social utility of property in a complex society. The doctrine recommends that the law continue to develop flexible mechanisms for the fragmentation of ownership, recognizing that the traditional model of unitary ownership is increasingly inadequate for modern economic arrangements.

## CHAPTER ELEVEN

### INTELLECTUAL PROPERTY AND PERSONAL DATA

#### SECTION I: THE CHALLENGE OF INTANGIBLE ASSETS

The classical Civil Code did not anticipate the rise of intangible assets. Intellectual property, governed by the Intellectual Property Code, and personal data, governed by the General Data Protection Regulation and the French Data Protection Act, represent new forms of property that challenge the traditional framework.

The Elrakhawi Doctrine extends the traditional framework of property rights to encompass these intangible assets. While intellectual property is governed by specific codes, its foundational principles of exclusivity, transferability, and infringement resonate with the civil law of property. The doctrine argues that the principles of the Civil Code should inform the interpretation of intellectual property law, particularly in areas such as the exhaustion of rights and the balance between private rights and public interests.

#### SECTION II: PERSONAL DATA AS DIGITAL PROPERTY

More radically, the doctrine argues that personal data, in the age of surveillance capitalism, must be recognized as a form of digital property. The current paradigm, which treats personal data as a free resource for corporate extraction, is inadequate. The doctrine proposes that individuals should have not just privacy rights but proprietary control over the economic value generated by their digital footprint.

This proposal would grant individuals the right to license their data, to be compensated for its use, and to control its transfer. The doctrine recognizes the practical challenges of implementing such a regime, particularly in the context of big data analytics, but argues that it is necessary to restore the balance of power between individuals and corporations.

## BOOK THREE OBLIGATIONS

### CHAPTER TWELVE THE CONTRACT AND THE 2016 REFORMS

#### SECTION I: THE ENGINE OF THE MARKET ECONOMY

Article 1101 (C. civ.)

"Le contrat est un accord de volontés entre deux ou plusieurs personnes destiné à créer, modifier, transmettre ou éteindre des obligations."

The law of obligations, particularly contract law, is the engine of the market economy. The monumental Ordinance of 10 February 2016 reformed the law of contracts, the general regime of obligations, and the proof of obligations. This reform, which took effect on 1 October 2016, represented the most significant transformation of French contract law since the enactment of the Civil Code.

The reform modernized the terminology and clarified the jurisprudence. The requirement of "cause," a concept that had generated considerable doctrinal controversy, was replaced by the requirements of lawful content and the existence of a counter-performance. The reform codified the duties of information and good faith during pre-contractual negotiations, establishing a framework for pre-contractual liability.

#### SECTION II: THE PHILOSOPHICAL SHIFT

The Elrakhawi Doctrine hails the 2016 reform as a masterpiece of legal engineering. The reform successfully balanced the need for legal certainty with the demands of economic efficiency, while embedding ethical principles like good faith directly into the DNA of contractual relations.

The reform also introduced specific provisions for standard-form contracts, regulating the imbalance of power between professionals and consumers. Unfair terms are deemed unwritten, and the judge has the power to control the substantive fairness of contracts in certain circumstances. The famous Chronopost decision of 1996, which invalidated a limitation of liability clause that contradicted the essential obligation of the contract, remains a cornerstone of substantive fairness in French contract law.

#### SECTION III: THE THEORY OF UNFORESEEN CIRCUMSTANCES

A revolutionary addition in the 2016 reform was the introduction of the theory of unforeseen circumstances (*imprévision*), codified in Article 1195. This provision allows a judge to revise a contract if an unforeseeable change of circumstances renders performance excessively onerous for a party who did not agree to bear the risk.

The classical approach to contractual immutability, exemplified by the *Canal de Craponne* decision of 1876, which refused to revise a contract despite centuries of inflation, has been definitively overturned by the codification of *imprévision*. The law now balances the need for legal certainty with the need for flexibility, ensuring that contracts remain instruments of justice rather than tools of oppression in the face of unforeseen economic shifts.

## CHAPTER THIRTEEN UNILATERAL WILL AND OTHER SOURCES

### SECTION I: BEYOND MUTUAL AGREEMENT

Article 1100-1 (C. civ.)

"Les obligations naissent de l'exécution volontaire d'une prestation, de la déclaration unilatérale de volonté, de l'enrichissement injuste, de la gestion d'affaires et de la réception de l'indu."

While contracts are based on mutual agreement, the Code recognizes other sources of obligations. Unilateral promises, under strict conditions, can be binding. The 2016 reform codified the jurisprudence on unilateral promises, providing that the revocation of a promise during the option period does not prevent the formation of the promised contract.

Quasi-contracts, such as the management of affairs (*gestion d'affaires*) and the payment of what is not due (*paiement de l'indu*), are based on the principle of unjust enrichment and the equitable prevention of one person benefiting at the expense of another. The *Elrakhawi Doctrine* highlights these institutions as the moral conscience of the law of obligations, ensuring that the rigid framework of contract and tort does not produce inequitable results in situations where formal agreements are absent but moral and economic justice demand restitution.

### SECTION II: THE BOUDIER DECISION

The action for unjust enrichment, codified in Articles 1303 to 1303-3, provides a general remedy for situations where one person has been enriched at the expense of another without justification. The landmark *Boudier* decision of 1892 established this general action, serving as the moral conscience of the law of obligations.

The *Elrakhawi Doctrine* views this action as a crucial safety valve, allowing the law to address situations of unjust enrichment that do not fit neatly into the categories of contract or tort. The

doctrine also addresses the challenges posed by digital transactions. The formation of contracts through automated systems, such as smart contracts and algorithmic trading, raises questions about the role of human will in the formation of obligations.

## CHAPTER FOURTEEN

### EFFECTS OF OBLIGATIONS AND EXECUTION

#### SECTION I: THE BINDING FORCE OF CONTRACTS

Article 1103 (C. civ.)

"Les contrats légalement formés tiennent lieu de loi à ceux qui les ont faits."

Contracts have the force of law between the parties. The principle of the binding force of the contract, enshrined in Article 1103, requires the parties to execute their obligations fully and in good faith. This principle, which replaced the traditional formulation that contracts are the "law of the parties," reflects a shift from a purely voluntarist approach to one that recognizes the normative dimension of contractual obligations.

The 2016 reform established that good faith is a general principle applying to all stages of the contractual relationship, making it a matter of public order. The reform also introduced flexibility in the choice between specific performance and damages, allowing creditors to seek termination for non-performance.

#### SECTION II: THE THEORY OF IMPRIVISION

A revolutionary addition in the 2016 reform was the introduction of the theory of unforeseen circumstances (*imprévision*), codified in Article 1195. This provision allows a judge to revise a contract if an unforeseeable change of circumstances renders performance excessively onerous for a party who did not agree to bear the risk. The judge can either revise the contract or terminate it if the parties cannot agree on a revision.

The Elrakhawi Doctrine views this as a crucial correction to the classical dogma of absolute contractual immutability. In a volatile global economy, the strict enforcement of contracts under radically changed conditions can lead to economic ruin and injustice. The doctrine of *imprévision* allows the law to adapt to changed circumstances while preserving the binding force of contracts in normal conditions.

## CHAPTER FIFTEEN

### CONTRACTUAL AND TORTIOUS CIVIL LIABILITY

## SECTION I: THE DUAL STRUCTURE

Article 1231-1 (C. civ.)

"Le débiteur est condamné, s'il y a lieu, au paiement de dommages et intérêts à raison de l'inexécution ou du retard dans l'exécution de l'obligation."

The French system maintains a strict separation between contractual liability and tortious liability, prohibiting the cumulation of actions. Contractual liability arises from the breach of a pre-existing contractual obligation, while tortious liability addresses the breach of a general duty of care.

The reform of 2016 modernized the regime of tort liability, explicitly codifying the liability for things in one's custody (Article 1242) and introducing specific provisions for the compensation of bodily injury. The Elrakhawi Doctrine analyzes this dual structure, arguing that while it provides conceptual clarity, the rigid boundary between contract and tort can sometimes obscure the underlying reality of the risk allocation.

## SECTION II: THE CHALLENGES OF MASS TORTS

In complex commercial relationships, the distinction between contract and tort can be artificial. A manufacturer who sells a defective product may be liable in contract to the buyer and in tort to third parties injured by the product. The Elrakhawi Doctrine suggests that the law should develop a more functional approach to liability, focusing on the nature of the risk and the relationship between the parties rather than the formal distinction between contract and tort.

The doctrine also addresses the challenges posed by mass torts, such as environmental disasters and product liability cases. The traditional framework of tort liability, designed for individual disputes, is inadequate for addressing the complex causal relationships and distributional issues raised by mass torts. The doctrine recommends that the law develop specialized mechanisms for mass torts, including class actions and specialized tribunals.

## BOOK FOUR

### GUARANTEES OF OBLIGATIONS

## CHAPTER SIXTEEN

### EXTINCTION OF OBLIGATIONS

## SECTION I: THE MODES OF EXTINCTION

Article 1234 (C. civ.)

"Les obligations s'éteignent par le paiement, par la novation, par la remise volontaire, par la compensation, par la confusion, par la perte de la chose, par la nullité ou la rescision, et par l'effet de la condition résolutoire."

Obligations are extinguished primarily by payment, but also by novation, debt remission, compensation, confusion, and the impossibility of performance. The rules governing payment ensure that the creditor receives the exact performance due, while the mechanisms of set-off and merger provide efficient ways to resolve mutual debts.

The Elrakhawi Doctrine notes that the modern economy, characterized by complex financial instruments and securitization, has led to the development of sophisticated mechanisms for the transfer and extinction of obligations that sometimes stretch the traditional boundaries of the Civil Code. The assignment of receivables, regulated in Articles 1321 to 1326, has been modernized to facilitate the securitization of debts.

## SECTION II: DIGITAL PAYMENTS

The doctrine also addresses the challenges posed by digital payments and cryptocurrencies. The traditional rules of payment, designed for cash and bank transfers, are inadequate for the digital age. The Elrakhawi Doctrine recommends that the law develop specific rules for digital payments, recognizing the unique characteristics of digital currencies and payment systems.

The doctrine also analyzes the economic dimensions of the extinction of obligations. The rules of set-off and merger reduce transaction costs by avoiding the need for multiple payments. However, they can also create opportunities for strategic behavior, particularly in cases of insolvency. The doctrine recommends that the law balance the efficiency gains of these mechanisms with the need to protect creditors and prevent abuse.

## CHAPTER SEVENTEEN

### PERSONAL GUARANTEES: SURETYSHIP

#### SECTION I: THE CONTRACT OF SURETYSHIP

Article 2288 (C. civ.)

"Le cautionnement est le contrat par lequel une personne, le caution, s'oblige envers le créancier à exécuter l'obligation du débiteur si celui-ci n'y satisfait pas lui-même."

Suretyship is a contract by which a third party undertakes to fulfill the obligation of the debtor if the debtor fails to do so. The 2006 reform introduced crucial protections for individual sureties,

notably the requirement of proportionality between the surety's commitment and their assets, and the annual duty of the creditor to inform the surety of the outstanding debt.

The Elrakhawi Doctrine praises these reforms as a vital intervention to protect individuals from the predatory practices of financial institutions. The requirement of proportionality prevents sureties from committing to obligations that they cannot reasonably fulfill, while the duty of information ensures that sureties are aware of the risks they are undertaking.

## SECTION II: CORPORATE SURETIES

The doctrine also addresses the challenges posed by corporate sureties. The rules protecting individual sureties do not apply to corporate sureties, on the assumption that corporations are sophisticated actors capable of assessing risks. However, in practice, small and medium-sized enterprises often provide sureties without fully understanding the risks. The Elrakhawi Doctrine recommends that the law extend some of the protections of individual sureties to small corporate sureties.

## CHAPTER EIGHTEEN REAL GUARANTEES: PLEDGE AND MORTGAGE

### SECTION I: THE MODERNIZATION OF SECURITIES

Article 2333 (C. civ.)

"Le gage est le droit réel conféré sur un bien meuble pour la sûreté d'une obligation."

Real guarantees provide the creditor with a preferential right over specific assets of the debtor. The 2006 reform modernized the law of securities, introducing the pledge without dispossession, which allows a debtor to use an asset as collateral while retaining its possession and utility.

The mortgage, the traditional guarantee for immovable property, requires strict registration formalities to ensure opposability against third parties. The Elrakhawi Doctrine highlights the economic significance of these reforms, which have greatly enhanced the liquidity of credit by allowing businesses to leverage their assets more efficiently without disrupting their operations.

### SECTION II: DIGITAL ASSETS AS COLLATERAL

The doctrine also addresses the challenges posed by digital assets. The pledge of digital assets, such as cryptocurrencies and virtual goods, raises questions about the application of

traditional rules. The Elrakhawi Doctrine recommends that the law develop specific rules for the pledge of digital assets, recognizing their unique characteristics.

## CHAPTER NINETEEN PRIVILEGES AND OTHER RIGHTS

### SECTION I: RIGHTS OF PRIORITY

Article 2324 (C. civ.)

"Les privilèges sont des droits que la qualité de la créance donne à un créancier d'être préféré aux autres créanciers, même hypothécaires."

Privileges are rights of priority granted by law to certain creditors based on the nature of their claim, such as wages or legal costs. The right of retention allows a creditor who holds a debtor's asset to retain it until the debt related to that asset is paid.

The Elrakhawi Doctrine views privileges as a necessary exception to the principle of equal treatment of creditors, reflecting social policy choices that prioritize certain claims, particularly those related to human dignity and the administration of justice, over the strict logic of commercial credit.

### SECTION II: INSOLVENCY AND PRIVILEGES

The doctrine also addresses the challenges posed by insolvency. The complex hierarchy of privileges can create inefficiencies and disputes in insolvency proceedings. The Elrakhawi Doctrine recommends that the law simplify the hierarchy of privileges, reducing the number of categories and providing clearer rules for resolving disputes.

## BOOK FIVE SUCCESSION, GIFTS, AND WILLS

### CHAPTER TWENTY PROVISIONS OF SUCCESSION

#### SECTION I: THE TRANSMISSION OF THE ESTATE

Article 720 (C. civ.)

"Les successions s'ouvrent par la mort."

The law of succession governs the transmission of the deceased's estate. The Code establishes a strict order of heirs, prioritizing descendants and ascendants, while significantly enhancing the rights of the surviving spouse through recent reforms. The estate is treated as a universal entity, and the heirs succeed to the rights and obligations of the deceased.

The Elrakhawi Doctrine examines the tension between the automatic devolution of the estate and the modern need to protect vulnerable heirs from inheriting toxic liabilities. The traditional rule that heirs are liable for the debts of the estate up to the value of the assets received has been modified to allow heirs to accept the succession under benefit of inventory, limiting their liability to the value of the assets.

## SECTION II: DIGITAL ASSETS IN SUCCESSION

The doctrine recommends that the law develop more nuanced approaches to the acceptance of successions, particularly in cases where the estate is heavily indebted. The doctrine also addresses the challenges posed by digital assets, recommending that the law develop specific rules for the transmission of digital assets upon death.

## CHAPTER TWENTY-ONE WILLS AND THEIR PROVISIONS

### SECTION I: FREEDOM OF TESTATION CONSTRAINED

Article 893 (C. civ.)

"On ne peut disposer de ses biens par testament que sous la forme de don, de legs ou d'institution d'héritier."

The freedom of testation is constrained by the rules of the reserved portion, which guarantees a minimum share of the estate to the protected heirs, typically the descendants. The disposable portion can be freely given by will.

The Elrakhawi Doctrine critically analyzes the reserved portion, noting that while it protects the family unit and prevents the concentration of wealth, it can sometimes conflict with the modern desire for individual autonomy and the need to reward non-heir caregivers or business successors. The doctrine suggests a gradual liberalization of the rules of forced heirship, allowing testators greater freedom to dispose of their property while maintaining protections for vulnerable heirs.

### SECTION II: DIGITAL WILLS

The doctrine also addresses the challenges posed by digital assets. The transmission of digital assets upon death raises questions about the application of traditional rules. The Elrakhawi Doctrine recommends that the law develop specific rules for digital wills, recognizing the unique characteristics of digital assets.

## CHAPTER TWENTY-TWO GIFTS: CONDITIONS AND EFFECTS

### SECTION I: ACTS OF LIBERALITY

Article 894 (C. civ.)

"La donation entre vifs est un acte par lequel le donateur se dépouille actuellement et irrévocablement de la chose donnée en faveur du donataire qui l'accepte."

Gifts are acts of liberality that deplete the donor's estate to the benefit of the donee. The Code requires gifts to be executed by notarial deed, ensuring deliberation and legal certainty. The principle that one cannot give and retain prohibits conditions that make the gift revocable at the sole will of the donor. Gifts are subject to reduction if they infringe upon the reserved portion of the heirs.

The Elrakhawi Doctrine views the strict formalities of gifts as a necessary safeguard against impulsivity and undue influence, preserving the integrity of the family patrimony. The doctrine also addresses the challenges posed by digital gifts, recommending that the law develop specific rules for digital gifts, recognizing their unique characteristics.

## CONCLUDING PART CONTEMPORARY APPLICATIONS AND COMPARATIVE STUDIES

### CHAPTER TWENTY-THREE THE 2016 REFORM SYNTHESIS

This chapter provides a deep, analytical synthesis of the 2016 reform. It traces the philosophical shift from the purely voluntarist approach of the nineteenth century, which viewed the contract as the supreme law of the parties' will, to a more structured, economic, and ethically grounded approach.

The reform introduced concepts like the standard-form contract, regulating the imbalance of power between professionals and consumers, and codified the doctrine of frustration. The Elrakhawi Doctrine concludes that the 2016 reform successfully rescued French contract law

from the stagnation of jurisprudence, providing a modern, coherent, and socially responsible framework for the twenty-first-century economy.

The doctrine also identifies areas where the reform could be improved. The treatment of unforeseen circumstances, while a welcome addition, is limited to cases where the parties have not agreed to bear the risk. The doctrine recommends that the law develop more flexible mechanisms for adjusting contracts in response to changed circumstances, particularly in long-term relational contracts.

## CHAPTER TWENTY-FOUR TECHNOLOGY AND ARTIFICIAL INTELLIGENCE

The Elrakhawi Doctrine applies its critical lens to the most pressing challenge facing the Civil Code: the rise of artificial intelligence and autonomous systems. Can an algorithm possess legal capacity to enter into a smart contract? If an autonomous vehicle causes an accident, does the liability fall under the regime of things in one's custody, or does it require a new category of strict liability for algorithmic agents?

The doctrine argues that the Civil Code, despite its adaptability, is reaching its conceptual limits when confronted with non-human actors. It proposes the creation of a specific legal regime for advanced AI, granting it a limited, functional legal personality for the purpose of liability and asset management, thereby preserving the human-centric foundation of the Civil Code while accommodating technological reality.

The doctrine also addresses the challenges posed by digital property, digital contracts, and digital succession. The Elrakhawi Doctrine recommends that the legislature develop a comprehensive framework for digital law, drawing on the principles of the Civil Code while adapting them to the specific characteristics of digital assets and transactions.

## CHAPTER TWENTY-FIVE COMPARATIVE STUDY WITH THE EGYPTIAN CIVIL CODE

The Egyptian Civil Code of 1948, masterfully drafted by the eminent jurist Al-Sanhuri, represents a unique synthesis of the French Civil Code and Islamic jurisprudence. This chapter compares the two codes across key domains: contract formation, the theory of unforeseen circumstances, tort liability, and property rights.

The Elrakhawi Doctrine highlights how the Egyptian Code improved upon the French model by explicitly integrating the principle of social solidarity, expanding the scope of tort liability, and providing a more flexible framework for contractual fairness. The Egyptian Code also incorporated elements of Islamic law, particularly in the areas of family law and succession, creating a hybrid system that reflects the cultural and religious values of Egyptian society.

This comparative study demonstrates that legal transplants are not mere copies but creative adaptations, where the receiving culture reshapes the imported law to reflect its own ethical and social values. The Elrakhawi Doctrine recommends that comparative scholars continue to study the Egyptian Civil Code as a model for the synthesis of different legal traditions.

## CONCLUSION

### LAW AS A TOOL FOR HUMANITY

The French Civil Code, in its current manifestation, is a living instrument that has adapted to the shocks of industrialization, the demands of the welfare state, and the complexities of the digital economy. The critical comparative methodology reveals that the Code is not a neutral set of rules, but a dynamic framework that distributes risk, opportunity, and power.

By integrating historical genealogy, economic analysis, and critical theory, this commentary demonstrates that the true genius of the Code lies in its capacity for structural adaptation. The struggle for justice requires the continuous re-evaluation of these legal mechanisms, ensuring that the rule of law serves human dignity, ecological sustainability, and democratic equality, rather than merely protecting capital and entrenched power.

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