

THE *MIXITÉ* OF QUEBEC'S RECODIFIED CIVIL LAW: A REFLECTION OF QUEBEC'S LEGAL CULTURE*

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Summary:

Quebec civil law is often described as being mixed. Indeed, it is at the intersection of the civil law and common law traditions. However, the 1991 civil law recodification gave Quebec law more autonomy relative to the different traditions that had served as models. While the Quebec Civil Code (the replacement to the Civil Code of Lower Canada) was the product of an exercise in “re-civilizing” Quebec civil law, I contend that, nevertheless, the concept of *mixité* (mixity) is still relevant to understanding Quebec civil law. I will resort to concepts, such as legal acculturation, that describe the processes leading to the *mixité* of a legal system. I also assert that the *mixité* of the sources is not the most important characteristic of Quebec's legal system, but rather that it is the *mixité* of the legal methods and the *mixité* of the legal culture. While the Civil Code has changed, its legal environment has not. Thus, the interpretation of the Civil Code contributes to perpetuation of the *mixité*. I also provide some recent examples.

Résumé:

Le droit civil québécois est souvent décrit comme étant mixte. Il se situe en effet à la rencontre des traditions de droit civil et de common law. Or la recodification du droit civil en 1991 a accordé davantage d'autonomie au droit québécois par rapport aux diverses traditions qui lui avaient servi de modèle. Considérant que le Code civil du Québec, remplaçant le Code civil

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du Bas Canada, est issu d'un exercice de « recivilisation » du droit civil québécois, nous allons montrer que malgré tout le concept de mixité est encore pertinent pour rendre compte de la situation du droit civil québécois. Pour ce faire, nous allons recourir à des concepts, tels que celui d'acculturation juridique, qui décrivent les processus pouvant mener à la mixité d'un droit. Nous allons également montrer que ce qui caractérise ce droit n'est pas avant tout la mixité de ses sources mais la mixité des méthodes utilisées en droit et la mixité de sa culture juridique : le Code civil a changé mais son environnement juridique a peu évolué; l'interprétation du Code civil contribue à perpétuer la mixité. Nous allons donner quelques exemples récents pour illustrer notre propos.

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INTRODUCTION

Quebec civil law has been subject to many influences throughout its history. Roughly speaking, English law was superimposed on old French law. Later on, there was a strong French influence when Quebec civil law was codified in the nineteenth century.¹ The Civil Code has sometimes been interpreted following the rules applicable to statutes, as in Anglo-American law.² Throughout the twentieth century, Quebec civil

1. QUEBEC CIVIL LAW: AN INTRODUCTION TO QUEBEC PRIVATE LAW 28–29 (John E.C. Brierley & Roderick A. Macdonald eds. 1993) [hereinafter QUEBEC CIVIL LAW] (“In a necessarily large part, the Quebec Code was . . . a derivative of the French Code, not only in organization and style but also in substance.”).

2. Matthieu Juneau, *La Notion de Droit Commun en Droit Civil Québécois* 180 (July 2009), www.theses.ulaval.ca/2009/26391/26391.pdf (unpublished LL.M. Thesis, Université Laval); H. Patrick Glenn, *La Cour Suprême du Canada et la Tradition du Droit Civil*, 80 CANADIAN BAR REVIEW [CAN. B. REV.] 151, 159 (2001); Pierre-Gabriel Jobin, *La Cour Suprême et la Réforme du Code Civil*, 79 CAN. B. REV. 27, 42 (2000);

law was influenced by the French, English, and American legal systems to varying degrees.³ Quebec civil law has evolved from the old French law to the point where it cannot be qualified as belonging exclusively to the civil-law family (i.e., as belonging to the Roman-canonical tradition), but should rather be characterized as a mixed law jurisdiction.

The recodification of Quebec civil law—civil law being the law in civil, rather than criminal, matters—was part of a movement to bring Quebec back into the civilian tradition. Therefore, one may ask whether *mixité* is still a relevant and useful concept in describing Quebec civil law. I briefly answer that the concept is still relevant, but above all that *mixité* is a convenient way to characterize the state of a legal system at some point in time, but not to describe the several phenomena that lead to it.

One may summarize the issue in the following way: What makes Quebec law mixed? And is it even still mixed? The question also relates to the processes leading to *mixité*, in particular legal acculturation. In this respect, is this process still under way or has it been discontinued? In other words, the issue is to verify for Quebec the affirmation made by Patrick Glenn: “This is not to say that a mixed jurisdiction must exist in perpetuity. A jurisdiction once seen as mixed may effectively absorb the ingredients of *mixité* and convert them into those of a new, autonomous (or apparently autonomous) local law.”⁴ I will sketch a definition of *mixité* and then of the phenomena that lead to it. I will show that, today, Quebec civil law is still mixed, even after efforts to recodify and “re-civilize” the law, and that the methods used to interpret the Civil Code contribute to perpetuation of the *mixité*.

I. PRESENTATION OF THE CONCEPTS

A. DEFINITION OF MIXITÉ

To carry out this exercise, I should first define *mixité*. However, the notion of a legal system's *mixité* does not have any definition shared by those who take an interest in it.⁵ According

Jean-Louis Baudouin, *L'Interprétation du Code Civil Québécois par la Cour Suprême du Canada*, 53 CAN. B. REV. 715, 715–37 (1975).

3. QUEBEC CIVIL LAW, *supra* note 1, at 52.

4. H. Patrick Glenn, *Mixing It Up*, 78 TUL. L. REV. 79, 86 (2003).

5. See Vernon Valentine Palmer, *Quebec and Her Sisters in the Third Legal*

to the proposed definitions, the number of mixed jurisdictions varies significantly. Most often mentioned are those stemming from the encounter/crossbreeding/interbreeding between the civil and common law traditions: Quebec, Louisiana, Scotland, South Africa, Puerto Rico, the Philippines, and Israel. In order to properly sketch a definition, I begin by explaining the notions of system, tradition, and duality.

One should first distinguish between system and tradition. A “system” is closed and well-defined—or rather, confined—with its own law, institutions, statutes, jurisprudence, etc. In other words, “system” refers to the law in force in a particular jurisdiction.⁶ Thus, we talk about the French, English, or Quebec legal systems. Conversely, the “tradition” is open and larger, and is transmitted over the centuries; the Latin “*traditio*” conveys the right meaning. We then talk about the Roman–Germanic or the Roman-Canonical tradition—or, simply put, the civil law tradition—or the English, Anglo-American or common law tradition.⁷ The idea of filiation leads to discussing them as legal families.⁸ Therefore, a given legal system normally belongs to a given legal tradition.

There are also some “sub-traditions.” For example, there is both codified civil law and non-codified civil law, or civil law codified according to the French model and civil law codified

Family, 54 MCGILL LAW JOURNAL [MCGILL L.J.] 321, 339 (2009) (Can.) (“In truth, there has never been a canonical definition of a mixed jurisdiction or a mixed legal system.”); Vernon Valentine Palmer, *Introduction to the Mixed Jurisdictions*, in MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY 3, 7 (Vernon Valentine Palmer ed., 2d ed. 2012) [hereinafter MIXED JURISDICTIONS WORLDWIDE] (“There has never been an accepted definition of a mixed jurisdiction”); see also Esin Örüçü, *Mixed and Mixing Systems: A Conceptual Search*, in STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING 335, 335 (Esin Örüçü et al. eds., 1996) (“The third hurdle is one of finding a satisfactory definition of a mixed system; one which can cover all the instances of mixing, whether historical or contemporary, overt or covert, structured or unstructured, complex or simple, blended or unblended, and can distinguish mixed jurisdictions from legal pluralism, where laws of different origin exist side by side . . .”).

6. See Michael Hartney, *Système Juridique*, in DICTIONNAIRE ENCYCLOPÉDIQUE DE THÉORIE ET DE SOCIOLOGIE DU DROIT 595 (André-Jean Arnaud ed., 2d ed. 1993) [hereinafter DICTIONNAIRE ENCYCLOPÉDIQUE].

7. For more on the various legal traditions, see generally H. PATRICK GLENN, LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW (Oxford Univ. Press, 4th ed. 2010).

8. See Jaakko Husa, *Legal Families*, in ELGAR ENCYCLOPEDIA OF COMPARATIVE LAW 382, 382–88 (Jan M. Smits ed., 2006) (discussing various attempts at classifying legal families).

according to the German model.⁹

Quebec has what Justice Pigeon called a “dualité de droit commun,”¹⁰ and what Professor Brierley called a “dualité de droits communs.”¹¹ One must understand from these expressions that there are two legal traditions within the same legal system: one to govern the law in civil matters and another to govern the law in criminal matters.¹² Some authors describe this duality as being characteristic of mixed jurisdictions.¹³ The word “mixité” is sometimes used to describe duality.¹⁴ In reality, mixed

9. See H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW* 147–48 (4th ed. 2010) (discussing the French and German Civil Codes); RENÉ DAVID & JOHN E.C. BRIERLEY, *MAJOR LEGAL SYSTEMS OF THE WORLD TODAY: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW* 71 (3d ed. 1985) (“During the entire period when French jurists were devoting themselves to the exegesis of their own codes, German jurists continued the work of the universities on the Roman law texts, and in Germany, a new school . . . was successful in bringing the Romanist principles to a degree of systematisation hitherto unattained . . . The result is a difference in both the method and style between the French and German Civil Codes.”); JEAN GAUDEMET, *LES NAISSANCES DU DROIT: LE TEMPS, LE POUVOIR ET LA SCIENCE AU SERVICE DU DROIT* 217–24 (4th ed. 2006).

10. LOUIS-PHILIPPE PIGEON, *RÉDACTION ET INTERPRÉTATION DES LOIS* 50 (1978). Translated into English, “duality of droit commun,” means “duality of common law,” but one should understand the expression “common law” here is used in a neutral sense, different from its usual specific meaning; i.e., the common law of England. See Juneau, *supra* note 2, at 2–3, 7–8; John E.C. Brierley, *The Renewal of Quebec's Distinct Legal Culture: The New Civil Code of Québec*, 42 *UNIVERSITY OF TORONTO LAW JOURNAL* [U. TORONTO L.J.] 484, 484 n.1 (1992) (“The specificity of the historical tradition of the Roman–Germanic system prompts the use of the term ‘Civil law’ rather than ‘civil law’ because the latter may serve to designate any body of private law rules, whatever their historical origins, as opposed to criminal, military, or ecclesiastical law. By the same token, the term ‘Common law’ is adopted here to distinguish that historical legal tradition from the notion of a ‘general’ or ‘common’ law, which idea also exists in Civil law countries.”).

11. John E.C. Brierley, *La Notion de Droit Commun dans un Système de Droit Mixte: Le Cas de la Province de Québec*, in *LA FORMATION DU DROIT NATIONAL DANS LES PAYS DE DROIT MIXTE: LES SYSTÈMES JURIDIQUES DE COMMON LAW ET DE DROIT CIVIL* 103, 105 (1989).

12. Even though Justice Pigeon and Professor Brierley speak about private law and public law.

13. See, e.g., Palmer, *supra* note 5, at 8 (“[Mixed jurisdiction] systems are built upon dual foundations of common law and civil law materials.”).

14. See *id.* at 10 (“To the casual observer, the private law sphere may, in many mixed jurisdictions, have the outward appearance of a ‘pure’ civil-law system. It contains the law of persons, family law, property, succession law, and obligations which the civilians conceive to embrace all of contract, quasi-contract, and delict In contrast to the civilian sphere, the public law in a mixed jurisdiction will appear to be typically Anglo-American.”). For a further example of such duality, see Alain-François Bisson, *Dualité de Systèmes et Codification Civiliste*, in *CONFÉRENCES SUR LE NOUVEAU CODE CIVIL DU QUÉBEC, ACTES DES JOURNÉES LOUISIANAISES DE L'INSTITUT CANADIEN D'ÉTUDES JURIDIQUES SUPÉRIEURES* 1991 39 (1992).

jurisdictions have witnessed an evolution of their civil law under the influence of English law: many phenomena have generated a gradual transformation of the law to be applied in civil matters, to the point that the legal system is described as mixed. The first specialist in this area, T.B. Smith, gave to the expression “mixed jurisdictions” a meaning “in which a basically civilian system has been under pressure from the Anglo-American common law and has in part been overlaid by that rival system of jurisprudence.”¹⁵

To succeed in defining *mixité*, one must recognize that mixed legal systems: (1) cannot be classified exclusively in one legal tradition; and (2) contain elements from more than one legal family¹⁶ or legal tradition.¹⁷ To summarize, it is a system that is difficult to classify, because it is a system at the intersection of at least two legal traditions.

There are also degrees of *mixité*. For example, the systems of Louisiana and Quebec are not the same. The common law tradition occupies a much larger space in Louisiana; nevertheless, it is still considered a mixed legal jurisdiction.¹⁸ Therefore, we

15. T.B. Smith, *The Preservation of the Civilian Tradition in “Mixed Jurisdiction,”* 35 REV. JUR. U.P.R. 263, 265 (1966).

16. Jacques du Plessis, *The Promises and Pitfalls of Mixed Legal Systems: The South African and Scottish Experiences,* 9 STELLENBOSCH LAW REVIEW [STELLENBOSCH L. REV.] 338, 338–39 (1998) (S. Afr.) (“[T]he label of ‘mixed legal system’ has come to be applied to those systems . . . where the ‘mix’ is between the elements of the common law family and the civil law family.”).

17. William Tetley, *Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified),* 60 LA. L. REV. 677, 684 (1999) (“A mixed legal system is one in which the law in force is derived from more than one legal tradition or legal family.”).

18. See Palmer, *supra* note 5, at 8–9 (“A second characteristic [of mixed jurisdictions] is quantitative and psychological. The presence of these dual elements will be *obvious* to an ordinary observer. There is probably a quantitative threshold to be reached before this will occur. This threshold explains why the states of Texas and California, which indeed have *some* civil law in their legal systems, are generally regarded as ‘common-law’ states, while the state of Louisiana is regarded as a mixed jurisdiction. The civil-law elements in the former are not nearly as obvious as in the latter.”) (emphasis in original); Christopher Osakwe, *Louisiana Legal System: A Confluence of Two Legal Traditions,* 34 AM. J. COMP. L. SUPP. 29, 29–30, 37 (1986) (“Within the harmonious partnership that exists in modern Louisiana Law the common law has evolved as the dominant element By this I mean to say that the mental skeleton of the modern Louisiana legal system—its infrastructure (including the structural arrangement of its legal institutions, the pattern of the legal profession, the professional training of the respective legal actors and the historical divisions of law) and its methodology (including its attitude towards sources of law, judicial reasoning, judicial style and laws of procedure and evidence)—is of the common law mold. The one area of Louisiana law where the civil law is firmly entrenched is substantive private law. By contrast, the substantive rules of the public law component of Louisiana reflect the common law and statutory

must consider degrees of mixité, along with the various forms in the different sub-traditions. There are non-codified legal systems, like Scotland and South Africa.¹⁹ There are also those that have kept French criminal law, like Mauritius.²⁰

Moreover, each jurisdiction may have borrowed different institutions and may have integrated them differently. For example, some mixed jurisdictions adopted the trust; some without change, others, as Quebec did, by “civilizing” it.²¹ The number of borrowings may vary, as may the degree to which they are integrated. In addition, the methods may have been affected differently. Finally, the legal culture always contains a greater local element; it may be more or less close to the initial legal model or to the legal model that was superimposed. Language barriers are also an important factor, because the legal community in the borrowing country may not have ready access to the legislation, jurisprudence, and doctrine generated in the country from which it has borrowed.

Quebec law is often described as mixed because of its sources.²² It is my contention that both the methods and legal culture are mixed.

When we are talking about the mixité of the institutions, we should distinguish between Parliament and the legislatures, the courts, etc., on the one hand, and civil law and the Civil Code on

developments in American law in general Nevertheless, it is my belief that the civil law component of Louisiana law is of more significance to the ordinary citizens of Louisiana.”); Robert A. Pascal, *Louisiana's Mixed Legal System*, 15 *REVUE GÉNÉRALE DE DROIT [REV. GEN. D.]* 341, 341–42 (1984) (Can.) (citations omitted) (“The Territory of Orleans, roughly the area of the present State of Louisiana, was carved out of the vast Louisiana Territory in 1804 and became the State of Louisiana in 1812. With the United States domination Louisiana’s public law became American, but its private law remained Spanish. The Congress of the United States, though it possessed legislative authority to do so until 1812, never imposed the common law on Louisiana; and since 1812 the Louisiana Constitution has contained a provision rendering impossible the legislative adoption of unwritten law.”).

19. Palmer, *supra* note 5, at 6.

20. L. Neville Brown, *Mauritius: Mixed Laws in a Mini-Jurisdiction*, in *STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING*, 208, 218 (Esin Örucü et al. eds., 1996) (“The substantive criminal law, based on the French *Code Pénal* of 1812 . . . was embodied in a Mauritian Penal Code in 1838. This remains in force, subject to later amendments.”).

21. John E.C. Brierley, *The New Quebec Law of Trusts: The Adaptation of Common Law Thought to Civil Law Concepts*, in *DROIT QUÉBÉCOIS ET DROIT FRANÇAIS: COMMUNAUTÉ, AUTONOMIE, CONCORDANCE* 383, 383–85 (H. Patrick Glenn ed., 1993).

22. *See, e.g.*, Brierley, *supra* note 11, at 104.

the other. Some institutions are clearly of English or British origin (such as parliamentary system and courts).²³ Others are clearly of French origin (such as the Civil Code, at least in its idea and first conception).²⁴ Others are clearly mixed, for example rules of civil procedure.²⁵ All of this is related to the sources or origins of these institutions.

In addition to the origins of a particular system's rules and institutions, there are the methods and legal culture. These have been subject to an ongoing influence from the former colonial powers, and they have evolved through continuous contact with the former colonial powers' legal systems.

B. PROCESSES LEADING TO MIXITÉ

While several processes may lead to the mixité of a legal system, the primary processes are reception, borrowing, and acculturation. Acculturation is likely the most important, but it is easier to define after first discussing reception and borrowing. Furthermore, chronologically speaking, acculturation occurs after reception and borrowing. One might regroup the various phenomena under the expression "circulation of legal models," which reflects the phenomena more precisely.

Reception corresponds generally to a massive legal borrowing or to a massive legal transfer,²⁶ for example the

23. HENRI BRUN & GUY TREMBLAY, *DROIT CONSTITUTIONNEL* 9–10, 755 (4th ed. 2002); Paul Reeves, *The Quebec Legal System*, in GERALD L. GALL, *THE CANADIAN LEGAL SYSTEM* 165, 175–177 (3d ed. 1990) ("Our English type of judicial organization is not identical to that of the countries of the Romano–German family of law.").

24. See Sylvio Normand, *An Introduction to Quebec Civil Law*, in *ELEMENTS OF QUEBEC CIVIL LAW: A COMPARISON WITH THE COMMON LAW OF CANADA* 25, 25–26 (Aline Grenon & Louise Bélanger-Hardy eds., 2008) ("Although the civil law of Quebec is part of the French civil law tradition, as is obvious from its original sources and its initial codification following the model of the *Code Napoléon*, it has developed in a unique manner.").

25. *Lac d'Amiante du Québec Ltée v. 2858-0702 Québec Inc.*, [2001] 2 S.C.R. 743, paras. 32–34 (Can.) ("The rules of Quebec civil procedure themselves reveal the mixed nature of their sources In addition, civil trials in Quebec are conducted within a framework that has been influenced by the common law courts Thus the form that the civil trial has now taken in Quebec makes it markedly different from the continental European model."); JEAN-MAURICE BRISSON, *LA FORMATION D'UN DROIT MIXTE: L'ÉVOLUTION DE LA PROCÉDURE CIVILE DE 1774 À 1867* (1986); Jean-Maurice Brisson, *La Procédure Civile au Québec Avant la Codification: Un Droit Mixte, Faute de Mieux*, in *LA FORMATION DU DROIT NATIONAL DANS LES PAYS DE DROIT MIXTE* 93 (1989).

26. See Michele Graziadei, *Comparative Law as the Study of Transplants and Receptions*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 441, 443 (Mathias

reception of French or English law in the colonies. The borrowing of law then corresponds to a more precise borrowing, such as the borrowing of a particular institution,²⁷ a specific rule, or part of the law (in which the expression “partial reception” could also be used). The reception and borrowing may be imposed by the colonial power or desired by the people themselves.

Legal acculturation has been presented by different authors as both a result²⁸ and a process.²⁹ I prefer defining it as a process. This process appears when two legal traditions live alongside one another and the culture of one influences and penetrates the legal culture of the other. Two attempted definitions are worth considering, first Norbert Rouland's: “En droit, on peut définir l'acculturation comme l'ensemble des processus suivant lesquels les systèmes de normes juridiques, les comportements des acteurs et leurs représentations sont construits et modifiés par les contacts et interpénétrations entre cultures et sociétés;”³⁰ then Dominique Manaï's, for whom the phenomenon of acculturation “implique une altération globale d'un système juridique due au contact d'un système différent.”³¹ As for Henry Lévy-Bruhl, he made a distinction between borrowing and legal acculturation, the latter being “beaucoup plus rare et problématique, qui engendre des modifications susceptibles de changer la nature de l'ensemble des systèmes juridiques en présence.”³²

In Quebec's case, the legal system has been under a strong

Reimann & Reinhard Zimmermann eds., 2006) (“More recent contributions speak of the ‘transfer’ instead of ‘transplant’ of law. The term ‘reception’ is sometimes used as a synonym . . . though it also has a specific denotation referring to global legal transfers. In this sense, the most important case of ‘reception’ in the history of Europe is the diffusion of Roman law that occurred when the subject was taught in universities during the medieval and early modern ages.”).

27. Dominique Manaï, *Acculturation*, in *DICTIONNAIRE ENCYCLOPÉDIQUE*, *supra* note 6, at 3.

28. *Id.*

29. Norbert Rouland, *Acculturation Juridique*, in *DICTIONNAIRE DE LA CULTURE JURIDIQUE* 4 (Denis Alland & Stéphane Rials eds., 2003).

30. *Id.* My translation: “In law, one may define acculturation as the various processes following which the systems of legal norms, the behaviors of actors, and their representations are built and modified by contacts and interpenetrations between cultures and societies.”

31. Manaï, *supra* note 27. My translation: “implies a global alteration of a legal system because of the contact with a different system.”

32. Rouland, *supra* note 29 (citations omitted). My translation: “far more rare and problematic, and generating modifications that could change the nature of the various legal systems in presence.”

influence of English law as a result of history and geography, i.e., the cession of territory to colonial Great Britain, and Quebec's close proximity to legal systems belonging to the Anglo-American tradition. This has provoked many changes in legal rules, in the legal culture, and even in the legal structure.³³

I suggest the following definition of legal acculturation: the process wherein two legal cultures—issued from two different legal traditions, or even just from two different legal systems—live alongside one another, and one exerts an influence on the other so that the other evolves and is transformed, sometimes to the point that it experiences a structural transformation.

This phenomenon may take different forms. One may distinguish between legislative acculturation, judicial acculturation,³⁴ and acculturation resulting from private choices.³⁵ Borrowings made by a legislator to the law of another jurisdiction, this law being legislated or not, fall into the first category. The interpretations—mainly those that have been strongly criticized—given to the Civil Code by judges without any civil law formation or background fall into the second category. The case of a judge borrowing the interpretation given to a similar statute in another jurisdiction also falls into the second category. Contracts containing clauses redacted in accordance with the model of contracts made elsewhere fall into the third category. I propose that we add to these forms the case where a judge trained in civil law has been under the influence of another legal tradition and uses a hybrid method to apply the civil law, in particular to a civil code. Such a situation—acculturation by hybridization—corresponds to a sort of syncretism, like an intermediate situation between what Nathan Wachtel calls “acculturation par processus d'intégration” and “acculturation par processus d'assimilation.”³⁶

33. See Normand, *supra* note 24 (“As a French colony, New France was subject to the law of the mother country, in particular the Custom of Paris. However, several factors contributed to the formation of a [different] system of law The conquest of the colony by the British changed the constitutional foundations of government. Despite the inevitable uncertainties which followed, French law was preserved but, under the influence of the common law, it acquired certain hybrid elements.”).

34. JEAN CARBONNIER, *SOCIOLOGIE JURIDIQUE* 378–79 (2004) (referring to the first form as “acculturation légale”).

35. *Id.* at 379–80 (giving as an example the separation of property in marriage contracts in Quebec).

36. Nathan Wachtel, *L'acculturation*, in FAIRE DE L'HISTOIRE: NOUVEAUX PROBLÈMES 124, 130–32 (Jacques Le Goff & Pierre Nora eds., 1974). My translation: “acculturation by process of integration” and “acculturation by process of

Thus, one must distinguish among the reception of a code or model of code, the reception of the interpretation given to a code (or reception of a jurisprudence), and the reception of a doctrine or scholarship. Generally, the other mixed jurisdictions have been cut off from the influences of the first tradition or, after codification following the French model, did not have access, principally for linguistic reasons, to the interpretations given to the original model.³⁷

I now use these concepts to analyze Quebec civil law since the coming into force of the new Civil Code.

II. MIXITÉ IN QUEBEC SINCE RECODIFICATION

A. THE RECODIFICATION

Quebec recodified its civil law a little over twenty years ago.³⁸ Recodification should be described in the same manner as codification, which has been described as a phenomenon of legal acculturation.³⁹ In the years preceding and following the adoption and coming into force of the new code, we have seen a phenomenon of “re-civilization” of Quebec law.

On the one hand, at the legislative level, the preliminary provision of the Civil Code of Québec indicates that the Code “comprises a body of rules which . . . lays down the *jus commune*”; moreover, “the Code is the foundation of all other laws, although other laws may complement the Code or make exceptions to it.”⁴⁰ Hence, it occupies a central place in the legal order, as for any other civil code in a codified civil law jurisdiction. Doctrine and jurisprudence have generally acknowledged this affirmation.⁴¹

Moreover, still at the legislative level, the new code contains some borrowings that have been civilized, in particular the trust⁴²

assimilation.”

37. See Palmer, *A Descriptive and Comparative Overview*, in MIXED JURISDICTIONS WORLDWIDE, *supra* note 5, at 19, 39–42.

38. On January 1st, 1994, the Civil Code of Québec, S.Q. 1991, c. 64 (Can.) [C.C.Q.] came into force, replacing the Civil Code of Lower Canada, which had come into force on August 1st, 1866.

39. Rouland, *supra* note 29, at 6; see CARBONNIER, *supra* note 34, at 374–85.

40. Civil Code of Quebec, S.Q. 1991, c 64, Preliminary Provision (emphasis in original).

41. See Juneau, *supra* note 2, at 69 n.304, 73 nn.332–33.

42. Brierley, *supra* note 21, at 383 (“It is, after all, evident that the *Civil Code of Quebec* . . . seeks to put into place the idea of the trust upon the basis of a concept of eminently civilian derivation—the patrimony, couched as one appropriated to a

and the movable hypothec.⁴³ After all, Jean-Louis Baudouin wrote that the code “a réussi l’emprunt à la common law et à en codifier les règles, tout en les rendant parfaitement compatibles avec l’architecture et le contenu du Code civil dans son entier.”⁴⁴

On the other hand, jurisprudence and doctrine have accepted the idea of “effet de codification,”⁴⁵ first implicitly,⁴⁶ then explicitly.⁴⁷

Recodification had the general result not only of modernizing Quebec civil law, but also of bringing it back within the civil law tradition. Quebec civil law has become more autonomous.⁴⁸ But more autonomy does not mean complete autonomy. Further, more autonomy does not imply a complete break from the original traditions. Insofar as we are in the domain of culture and ideas, we cannot erect a wall that would isolate us from the rest of the world. Moreover, despite this greater autonomy, the legislator had drawn its inspiration from various foreign models during the recodification process.⁴⁹ A legal system may claim more autonomy in two ways: first, by reducing dependency on the original models and increasing its own local jurisprudence and doctrine,⁵⁰ and second, by increasing borrowings from foreign

purpose.”).

43. A hypothec is an ancillary right in a property of another and it serves as a security for an obligation. It is the civil law institution that plays the same economic function as the mortgage. A movable hypothec is on a movable property, the civil law equivalent of a personal property.

44. Jean-Louis Baudouin, *Quo Vadis?*, 46 CAHIERS DE DROIT [C. DE D.] 613, 617–18 (2005) (Can.). My translation: “managed successfully the borrowing to the common law and succeeded in codifying the rules, while rendering them perfectly compatible with the entire Civil Code’s architecture and content.”

45. My translation: “effect of codification.”

46. See *Pantel v. Air Canada* (1974), [1975] 1 S.C.R. 472, 472, 478 (Can.) (“Art. 1056 C.C. must therefore be interpreted, not as reproducing a statute of English inspiration, but as a new provision forming part of codification in which some fundamental principles are radically different from those of the common law. . . . What we have since 1867 is a code, and its provisions on this subject must be interpreted in keeping with the whole of which it is a part.”).

47. See Alain-François Bisson, *Effet de Codification et Interprétation*, 17 REV. GEN. D. 359 (1986) (Can.).

48. See Pierre-Gabriel Jobin, *La Circulation de Modèles Juridiques Français du Québec. Quand? Comment? Pourquoi?*, in MÉLANGES ADRIAN POPOVICI: LES COULEURS DU DROIT 599 (Générosa Bras Miranda & Benoît Moore eds., 2010).

49. H. Patrick Glenn, *Le Droit Comparé et l’Interprétation du Code Civil du Québec*, in LE NOUVEAU CODE CIVIL: INTERPRÉTATION ET APPLICATION, LES JOURNÉES MAXIMILIEN-CARON 1992, at 175–222 (1993).

50. For an example of a local doctrine, see Pierre-Gabriel Jobin, *L’Influence de la Doctrine Française sur le Droit Civil Québécois: Le Rapprochement et l’Éloignement*

legal systems outside the first models. In Quebec's case, there is a march to greater autonomy following both modes, but mostly the first one, i.e., reducing dependency and relying on local legal production. Recourse to French and English authorities is less present than in the past, and legislative borrowings from sources other than the French and English legal systems occurred during the recodification process.

B. THE RELEVANCE OF THE CONCEPT OF MIXITÉ SINCE RECODIFICATION

Recodification and "re-civilization" of Quebec civil law raise a legitimate question: is the concept of mixité relevant in describing this new situation? A system may be mixed, but still evolving, with a variable degree of mixité. Moreover, this question also aims to ask whether Quebec civil law has been static since recodification: the legal acculturation phenomenon, as a process which led to a long-term mixité situation, has made Quebec law evolve, but is this phenomenon still continuing to make it evolve?

In general, the legal traditions that have served as models in the past are still serving as models. Quebec civil law has largely drawn its inspiration from these models in its history, but the idea of acculturation also means what could be called a "continuous reception" (one author uses the expression "continuing mix,"⁵¹ and another "ongoing mixity").⁵² For instance, the French model, used for the 1866 codification, has continued to serve as a model through its jurisprudence and doctrine, but also through studies made in France and as a model still used in many respects in legal teaching or for legal categories (for example the private law/public law distinction).⁵³ The English legal tradition also served as a model, in different respects, be it voluntary or imposed. Only the form of the influence is different: some of the rules of English origin were imposed, as were some

de Deux Continents, 44 REVUE INTERNATIONALE DE DROIT COMPARÉ [REV. INT'L D. COMP.] 381 (1992) (Fr.).

51. Joseph McKnight, *Some Historical Observations on Mixed Systems of Law*, 22 JURID. REV. 177, 181 (1977) (Scot.) ("If the commitment to a prevailing set of rules is strong enough initially to stave off universal reception of new law, a mixed system has resulted and has been maintained. Once the formative period of mixing is passed, inertia tends to favour the permanence of the continuing mix.").

52. See H. Patrick Glenn, *A Concept of Legal Tradition*, 34 QUEEN'S L.J. 427, 439 (2008) (Can.) (discussing the "ongoing mixity of populations").

53. This distinction in French law relies on a division in the court system that is unknown to Quebec law. But still, it is used in legal teaching and in legal scholarship; we find it in some judicial decisions while others reject it.

judicial interpretations, whereas Quebec judges chose to follow the English style of judgments. However, judges choose to consider some judicial precedents binding or to use the common law technique of considering judgments.⁵⁴

The sources of Quebec civil law are still mixed. But this characteristic is not the most important. The sources of French law derive from Roman law, Canon law, customary law, and doctrine or learned law, among others.⁵⁵ But we would not say that French law is mixed. English law includes the common law (in its restricted sense), equity, and other branches of the law, like maritime law, which originates from the civil law tradition.⁵⁶ But still we do not say that English law is mixed.

The real interest resides in the *mixité* of legal culture and methods. I think that the answer to the question of whether Quebec legal culture is mixed is yes, for many reasons. First, the law continues to be practiced in a mixed environment. The judicial institutions and the civil procedure are still mixed.⁵⁷ Justice LeBel describes the Supreme Court of Canada's culture as a "culture juridique mixte."⁵⁸ Such a comment should not be neglected because of the importance of this Court's judgments in Quebec civil law, especially in the past. There are traces of this *mixité* of culture and methods in both the style and substance of the Court's judgments.⁵⁹

54. Normand, *supra* note 24, at 65–66, 76–77.

55. See Jean-Louis Halpérin, *Code Napoléon (Préparation, Rédaction et Évolution)*, in *DICTIONNAIRE DE LA CULTURE JURIDIQUE*, *supra* note 29, at 200, 202.

56. On English maritime law being of civilian origin, see William Tetley, *A Definition of Canadian Maritime Law*, 30 U.B.C. L. REV. 137, 145, 151–53 (1996) (Can.).

57. *Globe & Mail v. Canada*, [2010] 2 S.C.R. 592, paras. 27, 30, 40, 45 ("Quebec is, after all, a mixed jurisdiction."); Daniel Jutras, *Culture et Droit Processuel: Le Cas du Québec*, 54 MCGILL L.J. 273 (2009) ("The author affirms that the distinctiveness of Quebec's procedural law resides in its mixed culture, which is the product of the superimposition of different perspectives on the institutional values and symbols of the state's dispute-processing mechanisms.").

58. Louis LeBel, *Les Cultures de la Cour Suprême du Canada: Vers l'Émergence d'une Culture Dialogique?*, in *CONVERGENCE, CONCURRENCE ET HARMONISATION DES SYSTÈMES JURIDIQUES. LES JOURNÉES MAXIMILIEN-CARON 2008*, at 1, 6 (Jean-François Gaudreault-DesBiens et al. eds., 2009). Translated into English, "culture juridique mixte" means "mixed legal culture."

59. Normand, *supra* note 24, at 65–66 ("Despite their attachment to the civil law tradition, Quebec jurists have not applied deductive reasoning as strictly as in France. This is obvious from reading the judgments of the Quebec courts. Their form brings them closer to the judgments rendered by common law courts. To begin with, importance is placed on facts, which are often described in great detail. The statement of the legal norm is rarely limited to setting forth the article in the Code.

We must recognize that Quebec civil law has a historically-accepted dialogue “avec diverses autorités,”⁶⁰ but this dialogue diminished with the codification⁶¹ and the various movements to defend and protect the civil law tradition, especially in the 1920s and 1930s.⁶² I, however, have the impression that in recent years we have been going back to that kind of dialogue between traditions. We can find examples of this openness to dialogue between civil law and common law in a few writings, especially those of Professor Glenn⁶³ and Justice LeBel.⁶⁴ Professor Jutras defends the same idea when he makes the promotion of openness between traditions.⁶⁵ This idea of dialogue developed by Patrick Glenn is similar to what he says about the legal tradition when he compares it to the system: “Tradition is persuasive authority; in itself it lacks authoritativeness.”⁶⁶ Therefore, the idea of dialogue allows recourse not only to sources, but also to authorities.

All of this shows that the recodification and re-civilization movement has had an effect for some time. We see the effects of the new code's reception in some of the Supreme Court of Canada's judgments, for example *Doré v. Verdun (City)*,⁶⁷

It often leads the judge to review leading cases and relevant academic commentary. The judgment is relatively elaborate and the judge expresses a personal opinion.”).

60. David Howes, *La Domestication de la Pensée Juridique Québécoise*, 13 ANTHROPOLOGIE ET SOCIÉTÉS 103, 111 (1989) (Can.). Translated into English, “avec diverses autorités” means “with several authorities.” See Glenn, *supra* note 4, at 79 (“The existence of dialogue is an indication of meaningful comparison and commensurability. The content of the dialogue is most fruitfully directed towards the merits of particular legal propositions. Arguments which reify concepts of legal culture, or legal systems, or legal civilizations, and urge their necessary preservation, are philosophically untenable, self-defeating, and incompatible with the underlying character of human organization. The effect of ongoing dialogue is to open the range of available legal resources.”).

61. Howes, *supra* note 60, at 111–15.

62. See Sylvio Normand, *Un Thème Dominant de la Pensée Juridique Traditionnelle au Québec: La Sauvegarde de l'Intégrité du Droit Civil*, 32 MCGILL L.J. 559 (1987).

63. See Glenn, *supra* note 4.

64. See LeBel, *supra* note 58.

65. Daniel Jutras, *Cartographie de la Mixité: La Common Law et la Complétude du Droit Civil au Québec*, 88 CAN. BAR REV. 247 (2010).

66. H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW* 50 (4th ed. 2010).

67. [1997] 2 S.C.R. 862, 873, 876, 882–83 (Can.) (analyzing the recently enacted Civil Code of Quebec with help from commentaries provided by the Quebec Minister of Justice).

Prud'homme v. Prud'homme,⁶⁸ and *Gilles E. Néron Communication Marketing v. Chambre des notaires du Québec*.⁶⁹ We should also note recourse to authorities outside of the Quebec legal system, but within the civil law tradition. Even before the new code came into force, the Supreme Court had cited foreign civil law, such as Roman law, French law, and Belgian law.⁷⁰ This phenomenon may be described as legal acculturation. Jean Carbonnier wrote that legal nationalism “ferme le système national à l'influence des systèmes étrangers.”⁷¹ We have to notice that it is not always the case: legal nationalism in Quebec, even today, does not close the door to borrowing from other systems within the same tradition. Nor does it prevent looking beyond the civilian tradition; but the weight given to a foreign authority should of course be taken into account. Patrick Glenn wrote on this subject: “The mixed jurisdiction is therefore necessarily one in which ongoing use is made of nonlocal sources of law by way of persuasive authority.”⁷² This means that a mixed jurisdiction is necessarily open to foreign influences and borrowings.

I think there was a change of methods in *Épiciers Unis*

68. [2002] 4 S.C.R. 663, 681–83 (Can.) (“When the *Civil Code of Quebec* came into force in 1994, it placed actions in liability against a public authority in a new context. While art. 356 *C.C.L.C.* has its equivalent in art. 300 of the new Code, art. 1376 *C.C.Q.* now provides that the rules set forth in the Book On Obligations ‘apply to the State and its bodies, and to all other legal persons established in the public interest, subject to any other rules of law which may be applicable to them’ . . . It may seem surprising that a public law rule would be found in the *Civil Code of Quebec*. It is important to recall, however, that the new Code does not simply lay down a body of private law rules, or ‘a law of exception.’ As stated in its preliminary provision, it is the *jus commune* of Quebec.”) (emphasis in original).

69. [2004] 3 S.C.R. 95, 129 (Can.) (“The starting point is not the common law but the *Civil Code of Quebec*, which is the basic general law of Quebec, as provided for in the preliminary provision of the *Civil Code*. Courts should avoid needlessly importing or applying the common law rules in a matter which . . . is governed by the procedure, methods, and principles of the civil law.”).

70. See, e.g., *Laferrière v. Lawson*, [1991] 1 S.C.R. 541, 550, 556, 558–59, 561–64 (Can.) (“My reading of French and Belgian authorities on loss of chance leads me to believe that there is little doctrinal resistance to the application of the theory in classical cases, set out earlier.”); *Houle v. Canadian Nat'l Bank*, [1990] 3 S.C.R. 122, 136–38, 151, 156 (Can.); *Bank of Montreal v. Kuet Leong Ng*, [1989] 2 S.C.R. 429, 437–38 (Can.) (“In France, however, both the jurisprudence and the doctrine accept that the principle of good faith gives rise to an obligation of loyalty.”).

71. CARBONNIER, *supra* note 34, at 376. Translated into English, “ferme le système national à l'influence des systèmes étrangers” means “closes the national system to the influence of foreign systems.”

72. See Glenn, *supra* note 4, at 85.

Métro-Richelieu Inc., division "Éconogros" v. Collin,⁷³ followed by *Isidore Garon ltée v. Tremblay*; *Fillion et Frères v. Syndicat national des employés de garage du Québec (Isidore Garon)*,⁷⁴ and *Société de l'assurance automobile du Québec v. Cyr (SAAQ v. Cyr)*.⁷⁵ In the *Collin* case, the Supreme Court of Canada decided to revise the methods of interpreting the Civil Code because the methods of interpreting statutory law in common law provinces had changed.⁷⁶ In *Isidore Garon*, the Supreme Court was divided and we can see two opposed conceptions of the "droit commun," including the conception shared by the majority, which was a conception more common before recodification. In *SAAQ v. Cyr*, on the one hand the Court discussed the private law of contract ("droit privé des contrats") rather than the general law of contract ("droit commun des contrats"), and, on the other hand, the Court confused "un droit commun" and "common law" when it applied the common law to employment contracts, while it should obviously have written "droit commun" or general law.⁷⁷

The most striking illustration that Quebec still deserves to be described as a mixed jurisdiction is in the case *Globe & Mail v. Canada (Attorney General)*.⁷⁸ There, the Court wrote: "But the codification of civil procedure does not mean that civil procedure, as administered by the courts of Quebec, is completely detached from the common law model."⁷⁹ Justice LeBel makes a similar reasoning for the Civil Code and for the provisions of the former code having their source in English law; after some explanation, he asserts that common law may play a role in interpreting the Civil Code.⁸⁰ What he does, roughly speaking, but without saying

73. [2004] 3 S.C.R. 257 (Can.).

74. [2006] 1 S.C.R. 27 (Can.).

75. [2008] 1 S.C.R. 338, paras. 56, 78 (Can.).

76. *Collin*, [2004] 3 S.C.R. at paras. 20–23 ("In the common law province, statutes were considered exceptions whose nature often justified a narrow and at times quite formalistic interpretation. In contrast, the *Civil Code of Quebec*, which sets out the *jus commune* of that civil law province, must be interpreted liberally."); see Juneau, *supra* note 2, at 181–82.

77. *Cyr*, [2008] 1 S.C.R. at paras. 56, 78 (citing *Attorney General of Quebec v. Labrecque*, [1980] 2 S.C.R. 1057 (Can.)). The cited opinion uses the words "droit commun" rather than common law—the English version uses the words "ordinary law." *Labrecque*, [1980] 2 S.C.R. at 1082–83.

78. See [2010] 2 S.C.R. 592 (Can.).

79. *Id.* at para. 30.

80. *Id.* at paras. 40–45 ("When the mixed source of the Quebec law of procedure and evidence, and in particular the common law source of many exclusionary rules of evidence, is properly recognized, it becomes difficult to accept the argument that there is no residual role for the common law legal principles in the development of

it, is to come back to the twelfth rule elaborated by Frederick Parker Walton in 1907,⁸¹ and to put aside the reasoning in *Pantel v. Air Canada*⁸² and the idea of “effet de codification.” That is also a legal acculturation phenomenon. This last example corresponds to the idea of acculturation by hybridization.

In the aforementioned cases, judges relied in large part on jurisprudence, the place of which is strongly debated in mixed jurisdictions,⁸³ particularly in Quebec.⁸⁴ There is no doubt that jurisprudence occupies a great place in a judge’s reasoning.⁸⁵ Pierre Basile Mignault wrote in 1935 that jurisprudence is binding in fact but that it is not in law.⁸⁶ Justice Baudouin said almost the same thing in 2001 but without going as far,⁸⁷ writing that judges base their reasoning first on texts and that the jurisprudence is only used as illustration.⁸⁸ This is also a reflection of an acculturation by hybridization process.

It is not surprising that practitioners do the same. The way of practicing the law also reveals much about a legal culture: despite the new Code and the reaffirmation of the civil law tradition, Justice Baudouin has denounced the lawyers who plead

this part of Quebec Law.”).

81. FREDERICK PARKER WALTON, THE SCOPE AND INTERPRETATION OF THE CIVIL CODE OF LOWER CANADA 118–29 (1980) (citations omitted) (“**Rule Twelve.** *When a provision is derived from the French law it is to be interpreted by reference to French authorities, and when it is derived from the English law by reference to English authorities.*”).

82. [1975] 1 S.C.R. 472, 478 (Can.) (“Art. 1056 C.C. must therefore be interpreted, not as reproducing a statute of English inspiration, but as a new provision forming part of a codification in which some fundamental principles are radically different from those of the common law . . .”).

83. See Palmer, *supra* note 37, at 44–50 (discussing fundamental differences between common law, civil law, and mixed jurisdictions).

84. QUEBEC CIVIL LAW, *supra* note 1, at 121 (“The role that decided cases are seen to play as a source of law is one of the defining methodological features of a legal tradition. Not surprisingly, therefore, the normative status of *la jurisprudence* has been one of the most controversial questions in Quebec Civil Law.”) (citations omitted).

85. See John E.C. Brierley, *Quebec (Report 1)*, in MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY 329, 330–33 (Vernon Valentine Palmer ed., 2001); PIERRE-ANDRÉ CÔTÉ ET AL., INTERPRÉTATION DES LOIS 629–33 (4th ed. 2009).

86. Pierre Basile Mignault, *Le Code Civil de la Province de Québec et son Interprétation*, 1 U. TORONTO L.J. 104, 136 (1935).

87. Jean-Louis Baudouin, *Quebec (Report 2)*, in MIXED JURISDICTIONS WORLDWIDE, *supra* note 85, at 362–64.

88. *Id.* at 352 (“Unlike other mixed jurisdictions, Quebec courts do not achieve adherence to civilian rules or principles by reference to precedent. Precedents are only used as illustrations.”).

before him the jurisprudence applying the Code instead of the Code itself.⁸⁹ These lawyers become judges. An analysis of the Supreme Court's judgments in civil matters shows that judges continue to use judgments in their reasoning more than some would like, but with great variations in time and in each branch of the civil law. Thus, despite the maxim *non exemplis sed legibus judicandum est*, judges in Quebec continue to rely on jurisprudence, more than in a "pure" civil law jurisdiction, but less than in a "pure" common law jurisdiction.

Finally, legal education has had—and will continue to have—an impact on the phenomena of legal acculturation⁹⁰ and, therefore, on the evolution of Quebec law. The diminution of civil law courses centered on the Civil Code and the multiplication of courses whose methods and foundations come from the other legal tradition will continue to perpetuate a mixed legal culture.

CONCLUSION

The civil and common law traditions continue to influence Quebec law in civil matters. On the one hand, one must not confuse the different ways of resorting to foreign legal systems, whether of the same legal tradition or not. By distinguishing between "binding authority" and "persuasive authority,"⁹¹ one may resort to references taken from a foreign legal system while preserving, or at least pretending to preserve, a relative autonomy. On the other hand, sometime after recodification and after the affirmation and recognition of this "autonomy" by the jurisprudence, the Supreme Court came back to the idea of private law, to a French conception of that division in the law, and to some form of recourse to English law.

It is legitimate to ask ourselves whether, after recodification,

89. Baudouin, *supra* note 44, at 622.

90. See Jean Gaudemet, *Les Transferts de Droit*, 27 L'ANNÉE SOCIOLOGIQUE 29, 59 (1976) (Fr.); Catherine Valcke, *Legal Education in a Mixed Jurisdiction: The Quebec Experience*, 10 TUL. EUR. & CIV. L.F. 61, 61–62 (1995) (citations omitted) ("That legal education plays an important role in the shaping and flourishing of a given legal system is undeniable. The law students of today will be the legal players of tomorrow, and, like any game, the legal one is only as dynamic as its players are skilled. Perhaps underestimated, however, is how particularly crucial the role of legal education becomes where the legal systems concerned fall into the category of so-called 'mixed jurisdictions.' For in such systems, legal players must be capable of playing two games at once, which requires that they be trained to juggle with, and yet never confuse, two distinct sets of rules.")

91. See generally H. Patrick Glenn, *Persuasive Authority*, 32 MCGILL L.J. 261 (1987).

it is still relevant to describe Quebec civil law as a mixed law. Although the borrowings—we may still talk of mixed sources—have been “civilized,” the institutions (constitution and court system) are still of English origin, the procedure is still mixed, and the methods and the legal culture are still mixed, with some nuances. Recodification tried to re-civilize the methods, with some success at first, but the acculturation phenomenon continues. The legal culture is still mixed and is in part, and likely mainly, the cause and the reason of this new evolution in the methods. If we wish to take into account degrees of *mixité*, then Quebec civil law is a mixed law where the “civil law” component/element predominates.

In conclusion, one might say that there was an effort to remove the *mixité* from the code, but that it is not possible to remove the code from the culture within which it is evolving.