

# CONSIDERING PRECEDENT IN LOUISIANA: BALANCING THE VALUE OF PREDICTABLE AND CERTAIN INTERPRETATION WITH THE TRADITION OF FLEXIBILITY AND ADAPTABILITY\*

*Mary Garvey Algero\*\**

## I. INTRODUCTION

In civil law and mixed jurisdictions, past decisions usually carry some degree of persuasive authority, but they are not usually considered law like they are in common law jurisdictions. In United States jurisdictions, except for Louisiana, the “common law,” or judge-made law, is often considered a source of law, and courts abide by the doctrine of “stare decisis et quieta non movere,” which translates as “to stand by things decided and not disturb settled law.”<sup>1</sup> In its broadest sense, the doctrine of stare decisis commands judges to apply the law as it has been set out in one prior case when the prior decision was made by a court that is higher than, or sometimes equal to, the court rendering the present decision.<sup>2</sup> In Louisiana, a mixed jurisdiction, the doctrine

---

\* This paper builds on the author’s article, *The Sources of Law and the Value of Precedent: A Comparative and Empirical Study of a Civil Law State in a Common Law Nation*, 65 LA. L. REV. 775 (2005). The paper was presented at the Third Congress of Mixed Jurisdiction Jurists held in Jerusalem, Israel in June 2011.

\*\* Warren E. Mouledoux Distinguished Professor of Law, Loyola University New Orleans College of Law. The author gratefully acknowledges the support of the family of Warren E. Mouledoux, whose generosity helped provide funding to attend and present her research at the Third Congress of Mixed Jurisdiction Jurists held in Jerusalem, Israel. She also gratefully acknowledges the research assistance of Angela O’Brien, which was made possible by the support of the Alfred J. Bonomo, Sr. family and the Rosaria Sarah Lanasa Memorial Scholarship Fund.

1. Bryan A. Garner, A DICTIONARY OF MODERN LEGAL USAGE 827 (2d ed. 1995).

2. See Alvin B. Rubin, *Hazards of a Civilian Venturer in Federal Court: Travel and Travail on the Erie Railroad*, 48 LA. L. REV. 1369, 1371 (1988); see also James L. Dennis, *Interpretation and Application of the Civil Code and the Evaluation of Judicial Precedent*, 54 LA. L. REV. 1, 3-5 (1993) (“In the common law, judicial precedent plays a leading role, serving both as a source of law and as an example of a prior judge’s methodology in reasoning from the case-law materials.”).

of *jurisprudence constante* directs courts to give “great weight” to the rule of law accepted and applied in prior decisions when that rule of law, or interpretation of law, has been repeated in a long line of cases.<sup>3</sup>

Despite the fundamental differences between these two doctrines of interpretation, United States courts that follow the common law doctrine have embraced some of the flexibility inherent in the civil law doctrine,<sup>4</sup> and civil law and mixed jurisdictions throughout the world, including Louisiana, seem to have come to value the predictability and certainty that come with the common law doctrine.<sup>5</sup> This Article suggests that Louisiana courts are striking the right balance between valuing the predictability and certainty of interpretation that comes with a healthy respect for precedent and maintaining the flexibility and adaptability of the law by not strictly considering precedent a source of law. This Article discusses the results of an ongoing examination of the sources of law and the value of precedent in Louisiana. The examination involves a study of Louisiana legislation, Louisiana courts’ writings about the sources of law and precedent, and a survey of Louisiana judges. Part of that

---

3. *Borel v. Young*, 2007-0419 (La. 11/27/07); 989 So. 2d 42, 65 (explaining that *jurisprudence constante* applies in Louisiana and “operates with considerable persuasive authority”).

4. *See, e.g., Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876, 911-12 (2010) (recognizing the need to respect precedent “unless the most convincing of reasons demonstrates that adherence to it puts us on a course that is sure error.” Examples of potential reasons include a precedent that was not well reasoned, that is perhaps out of date, and that has been questioned or shown to be unworkable.); *Payne v. Tennessee*, 501 U.S. 808, 827-28 (1991).

5. *Borel*, 989 So. 2d at 65 (opining that the court should be reluctant to change its interpretation of a rule once it has ruled in an earlier case because the legislature and society should be able to rely on the finality, stability, and certainty of the court’s pronouncements); Alain Lacabarats, *The State of Case Law in France*, 51 LOY. L. REV. 79, 83 (2005) (recognizing that French courts tend to conform to the prior decisions of the *Cour de cassation* “to guarantee citizens a uniform application of the law”); C.C. art. 1(6) (Julio Romanach, Jr. trans., Lawrence Publishing Co. 1994) (Spanish legislature recognizing in the *Código Civil* that the jurisprudence of the courts can complement the sources of law and serve as doctrine established by the supreme court in a “constant manner”). *But see* Albert Tate, Jr., *Civilian Methodology in Louisiana*, 44 TUL. L. REV. 673, 678 (1970) (noting that legislation provides consistency, but judges are free to reinterpret legislation that they find has been incorrectly interpreted by a court in a prior decision). Judge Tate explained,

While we should always strive for consistency in treatment of similar interests and for coherency in the development of doctrinal concepts, we are free in so doing to disregard prior judicial interpretations and to return to the initial legislative concepts and to the basic considerations of social utility and fairness which underlie them.

*Id.* at 680.

examination included reviewing Louisiana judicial opinions on various issues to determine if there were differences in valuing precedent based on area of law or topic. It also included reviewing judicial opinions from the United States Supreme Court and New York state courts to compare these courts' approaches to the use of precedent with those of the Louisiana courts.

The Article is divided into four parts: first, it briefly discusses the Louisiana judicial system; second, it suggests reasons why Louisiana courts have increased their respect for prior decisions; third, the Article provides a spectrum of the value of precedent across jurisdictions; and fourth, it provides a summary of the results of the survey of Louisiana judges and explains how the survey results are consistent with what is evident in reported decisions.

Finally, the Article concludes that the prior decisions not only serve as well-reasoned examples of how the law could be interpreted but are valued and respected by courts, and often followed, because of systemic respect for jurisprudence or the doctrine of hierarchical precedent, i.e., lower courts abiding by the interpretations given to the law by courts to whom the lower courts' decisions will be appealed.<sup>6</sup>

## II. AN OVERVIEW OF THE LOUISIANA LEGAL SYSTEM

The Louisiana legal system structurally resembles the United States federal system and the majority of United States state legal systems. It is composed of three branches: the legislative, the executive, and the judicial.<sup>7</sup> The Louisiana legislature includes elected state officials who enact the laws,<sup>8</sup> and the executive branch includes a governor and many state agencies and departments that create and enforce administrative rules written to assist in the enforcement of state laws.<sup>9</sup> The Louisiana judicial system is similar to judicial systems throughout the United States, which include a level of trial courts, a level of intermediate appellate courts, and a supreme

---

6. Mary Garvey Algero, *The Sources of Law and the Value of Precedent: A Comparative and Empirical Study of a Civil Law State in a Common Law Nation*, 65 LA. L. REV. 775, 781, 812-14 (2005); Evan H. Caminker, *Why Must Inferior Courts Obey Superior Court Precedents?*, 46 STAN. L. REV. 817 (1994).

7. LA. CONST. art. II, § 1.

8. *Id.* art. III, § 1.

9. *Id.* art. IV, §§ 1, 5.

court.<sup>10</sup>

The Louisiana judicial system and laws were influenced primarily by French, American, and Spanish laws and principles. In the early 1800s, the United States purchased Louisiana from France. When the United States proposed setting up a common law system identical to many of the other existing states' systems, it met with some resistance in Louisiana. Responding to this resistance, the United States allowed the French and Spanish customary law and civil law traditions to govern areas of private law, such as property and family law. However, the United States installed a court system in Louisiana that was similar to the federal court system, and a system of public laws developed in Louisiana that was similar to public laws in the rest of the United States.<sup>11</sup> In 1804, the French government promulgated *le Code civil des français*, which later became known as the Code Napoleon, and it provided a model for the Louisianians who drafted a code to govern Louisiana.<sup>12</sup> Early codes and laws were often written in French, and the European influence in Louisiana was unmistakable.<sup>13</sup>

Over the next two hundred years, Louisiana's legal system and legal doctrines developed and benefitted from the influences of the federal and state legal systems throughout the United States, the French and Spanish legal systems, and legal systems from around the world.<sup>14</sup> The following concrete examples demonstrate how these influences came to Louisiana. In the twentieth century, as United States law schools took the primary role in educating lawyers throughout the country, lawyers trained in the common law in states other than Louisiana became

---

10. LA. CONST. art. V, § 1.

11. A.N. Yiannopoulos, *The Civil Codes of Louisiana*, 1 CIV. L. COMMENT. 1, ¶¶ 14, 16, 19-20 (2008), available at [http://www.law.tulane.edu/uploadedFiles/Institutes\\_and\\_Centers/Eason\\_Weinmann/v01i01-Yiannopoulos\(1\).pdf](http://www.law.tulane.edu/uploadedFiles/Institutes_and_Centers/Eason_Weinmann/v01i01-Yiannopoulos(1).pdf); VERNON VALENTINE PALMER, *THE LOUISIANA CIVILIAN EXPERIENCE: CRITIQUES OF CODIFICATION IN A MIXED JURISDICTION* 10-13 (Carolina Academic Press 2005); Symeon Symeonides, *The Louisiana Judge: Judge, Statesman, Politician*, in *LOUISIANA: MICROCOSM OF A MIXED JURISDICTION* 89, 91-92 (Vernon Valentine Palmer ed., 1999); Nina Nichols Pugh, *The Structure and Role of Courts of Appeal in Civil Law Systems*, 35 LA. L. REV. 1161, 1188 (1975).

12. Yiannopoulos, *supra* note 11, at ¶¶ 22, 34, 51; PALMER, *supra* note 11, at 54-55.

13. Yiannopoulos, *supra* note 11, at ¶¶ 22, 34, 51; PALMER, *supra* note 11, at 56-59.

14. See Ferdinand Fairfax Stone, *Tort Doctrine in Louisiana: From What Sources Does It Derive?*, 16 TUL. L. REV. 489, 506-09 (1942), and examples cited therein.

Louisiana lawyers and judges, bringing their common law training to the state. Also in the twentieth century, the Louisiana Law Institute translated the writings of Planiol and other French legal scholars into English, which provided Louisiana lawyers and judges, many of whom did not read French, with doctrine to consider in interpreting Louisiana laws that were taken from the Code Napoleon.<sup>15</sup>

The Louisiana legal system is rooted in enacted law, at least a portion of which is written in general terms.<sup>16</sup> This legislative foundation provides a solid base from which courts work to decide cases. This foundation is enhanced not only by a strong respect for precedent, especially for the decisions of the Louisiana Supreme Court, but also a responsibility to independently examine other courts' interpretations of enacted law and the power to reject precedent when it is erroneous.<sup>17</sup>

The Louisiana Civil Code identifies legislation and custom as the sources of law and provides that in the absence of these two, courts are to resort to equity.<sup>18</sup> Nowhere in the Civil Code or in any other Louisiana legislative or constitutional documents are

---

15. Kathryn Venturatos Lorio, *The Louisiana Civil Law Tradition: Archaic or Prophetic in the Twenty-First Century?*, 63 LA. L. REV. 1, 7 (2002).

16. *Unwired Telecom Corp. v. Calcasieu*, 2003-0732, p. 18 (La. 1/19/05); 903 So. 2d 392, 405-06 ("Not only does the jurist in a civil law system have more freedom when deciding cases because the judge is not bound by the principle of stare decisis, the civil law statutes and codes are usually drafted in more general terms than common-law statutes and thus depend more on judges to render them concrete through judicial interpretation."); William Tetley, *Mixed Jurisdictions: Common Law v. Civil Law*, 60 LA. L. REV. 677, 703 (2000) (explaining that civil law codes provide the fundamental law, or general principles, and statutes further explain the codes, followed by interpretation by the courts; in a common law system, common law statutes merely complete the case law, which is a primary source of law); John H. Tucker, *The Code and the Common Law in Louisiana*, 29 TUL. L. REV. 739, 757-58 (1955):

The essential difference between the civil and the common law lies in the generating force of authority. In the common law it rests wholly in the decisions of the court; in the civil law it is legislation. A code is not intended to provide for every contingency that might arise. It is a statement of general principles that are to be applied by deduction or analogy to particular cases. It is the function of the court in the common law jurisdictions to make the law. In the civil law the function of the court is one of interpretation.

17. See Tate, *supra* note 5, at 677-78.

18. LA. CIV. CODE ANN. arts. 1 & 4 (2011). Article 1 provides: "The sources of law are legislation and custom"; Article 4 provides: "When no rule for a particular situation can be derived from legislation or custom, the court is bound to proceed according to equity. To decide equitably, resort is made to justice, reason, and prevailing usages."

prior decisions identified as sources of law.<sup>19</sup> Except to the extent that a line of decisions can achieve the status of *jurisprudence constante* and perhaps become “custom”<sup>20</sup> or that courts may consult prior decisions to guide their decisions when they turn to equity, precedent is not a legislatively recognized source of law in Louisiana.<sup>21</sup> In fact, Louisiana courts often state that they are not bound by precedent like their common law brothers.<sup>22</sup>

Despite the fact that prior decisions are not identified as sources of law, Louisiana courts rarely write opinions without mentioning prior decisions, and they have gone so far as to elevate Louisiana Supreme Court decisions to the status of “law in fact” through their opinions. Of course, the irony in the courts’ actions is that the courts have neither the power to make law nor the power to make law about who has the power to make law. The Louisiana Constitution recognizes the Louisiana Supreme Court’s and appellate courts’ power to exercise supervisory review over lower courts.<sup>23</sup> At times, the Louisiana Supreme Court has used this supervisory reviewing power to opine that it is the final interpreter of Louisiana law and, thus, that what it says is the law.<sup>24</sup> But the Court seems to have retreated from its previous stance that its decisions absolutely bind the Louisiana lower courts. However, its earlier decisions, as well as the fact that many Louisiana judges and lawyers were trained in the common law prevalent in the rest of the United States, have resulted in a reverence for precedent that mirrors the reverence for precedent employed in the United States federal system and in the other

---

19. LA. CIV. CODE ANN. art. 2 (2011) defines legislation as “a solemn expression of legislative will.” Louisiana legislation includes the Louisiana Constitution, the Louisiana Civil Code, the Louisiana Revised Statutes, the Louisiana Code of Civil Procedure, the Louisiana Code of Criminal Procedure, the Louisiana Code of Evidence, and the Louisiana Children’s Code.

20. *Doerr v. Mobil Oil Corp.*, 00-CC-0947, p. 13-14 (La. 12/19/00); 774 So. 2d 119, 128-29 (“It is only when courts consistently recognize a long-standing rule of law outside of legislative expression that the rule of law will become part of Louisiana’s custom under Civil Code article 3 and be enforced as the law of the state.”).

21. In contrast, common law states such as New York recognize common law and legislative acts as the laws of the state. *See, e.g.*, N.Y. CONST. art. I, § 14.

22. *See, e.g.*, *Unwired Telecom Corp. v. Calcasieu*, 2003-0732, p. 18 (La. 1/19/05); 903 So. 2d 392, 405-06, *on reh’g*; *Doerr*, 774 So. 2d at 128-29; *Ardoin v. Hartford Acc. & Indem. Co.*, 360 So. 2d 1331, 1334 (La. 1978).

23. LA. CONST. art. 5, §§ 5(A) & 10(A).

24. *Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc.*, 06-0582 (La. 11/29/06); 943 So. 2d 1037, 1045. *But see* *Constr. Materials, Inc. v. Am. Fid. Fire Ins. Co.*, 388 So. 2d 365 (La. 1982) (“[T]he decisions of a court of last resort are not the law, but only evidence of what the court thinks is the law.”).

forty-nine states, thus giving Louisiana Supreme Court decisions the status of “law in fact.”

On the other hand, the Louisiana Supreme Court has recognized that the principle governing the value and effect of precedent in Louisiana is *jurisprudence constante*, not *stare decisis*.<sup>25</sup> *Jurisprudence constante* requires the courts to reinterpret the law with each new case but allows the courts to give great weight to an interpretation of law set forth in a long line of consistent decisions.<sup>26</sup> This principle of valuing prior decisions means that court decisions are not the law, but are mere evidence of how the law has been interpreted. Consistent with *jurisprudence constante*, the Louisiana Supreme Court has, in some decisions, referred to judicial decisions as secondary authority.<sup>27</sup> Yet, in different decisions, it has admonished appellate courts to follow its decisions.<sup>28</sup>

Thus, a review of Louisiana Supreme Court decisions shows a contradiction regarding the status of prior decisions, specifically with regard to prior decisions by the court and what value those decisions have to subordinate courts. The Louisiana Supreme Court recognizes its responsibility to reinterpret legislation and its power to change its prior interpretations when necessary to ensure proper interpretation and application of the law, such as when it has mistakenly interpreted the law or when the interpretation is seen as antiquated.<sup>29</sup> However, when it comes to subordinate courts, the court has directed them to follow its decisions because of its presence at the top of the hierarchy of the

---

25. *Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 2010-2267, p. 7-8 (La. 10/25/11); 2011 WL 5865523, at \*4; *Unwired Telecom Corp.*, 903 So. 2d at 405-06; *Doerr*, 774 So. 2d at 128.

26. *Borel v. Young*, 2007-C-0419, p. 21 (La. 11/27/07); 989 So. 2d 42, 65; *Doerr*, 774 So. 2d at 128-29; *Johnson v. St. Paul Mercury Ins. Co.*, 236 So. 2d 216, 218 (La. 1970), *overruled on other grounds*, *Jagers v. Royal Indem. Co.*, 276 So. 2d 309, 312 (La. 1973).

27. *Ardoin v. Hartford Acc. & Indem. Co.*, 360 So. 2d 1331, 1334, 1336 (La. 1978) (explaining that court decisions are secondary information “which may or may not reflect the meaning of the laws for contemporary purposes”); *see also* *Prytania Park Hotel, Ltd. v. Gen. Star Indem. Co.*, 179 F.3d 169, 175 (5th Cir. 1999) (discussing Louisiana law, the federal court of appeal explained, “Jurisprudence, even when it rises to the level of *jurisprudence constante*, is a secondary source in Louisiana.”).

28. *Johnson v. St. Paul Mercury Ins. Co.*, 236 So. 2d 216, 217-18 (La. 1970), *overruled on other grounds*, *Jagers v. Royal Indem. Co.*, 276 So. 2d 309, 312 (La. 1973).

29. *Willis-Knighton Med. Center v. Caddo-Shreveport Sales & Use Tax Comm’n*, 2004-0473, p. 21-27 (La. 4/1/05); 903 So. 2d 1071, 1085-88; *Constr. Materials, Inc. v. Am. Fid. Fire Ins. Co.*, 388 So. 2d 365, 367 (La. 1982).

Louisiana court system. With rare exception, the Louisiana subordinate courts have followed this direction and adhered to the supreme court's decisions even when concerns about the continuing wisdom of a given rule have led the subordinate courts to subtly voice their disapproval by recommending that the Court review its prior interpretation.<sup>30</sup>

Thus, in practice, Louisiana Supreme Court decisions are considered "binding" authority to lower courts in Louisiana. On the other hand, with regard to the decisions of intermediate appellate courts and trial courts and with regard to the Louisiana Supreme Court considering its own prior decisions, the doctrine of *jurisprudence constante* still applies, meaning that a consistent line of judicial decisions on a particular issue is entitled to great weight and is considered persuasive as to what the law is.<sup>31</sup> Further, just one decision by a court to which a lower court's decision is appealable is often given great weight and persuasive value, and the majority of Louisiana judges identify precedent as something they rely on to guide them in decision-making.<sup>32</sup>

The use of prior decisions is good for the development of Louisiana law because courts use these decisions much like other civil law jurisdictions use doctrine and custom. These prior decisions provide the analysis of doctrine and the continuity of custom, while still leaving some room for flexibility. The flexibility results from the absence of a legal requirement that courts strictly adhere to prior decisions.

Additionally, based on an examination of the value of precedent in the United States federal system and in some other states in the United States, it seems that what Louisiana courts are doing is consistent with an Americanized version of stare

---

30. See, e.g., *Lucky v. Fricks*, 511 So. 2d 1315, 1317 (La. Ct. App. 1987) ("Trial courts and courts of appeal are bound to follow the last expression of law of the Louisiana Supreme Court . . . . The time may be ripe to change the rule that there is no cause of action in Louisiana for intentional interference with contracts . . . . We, however, are powerless to make this change."); *Gauthreaux v. Rheem Mfg. Co.*, 588 So. 2d 723, 725 (La. Ct. App. 1991) ("Although we sympathize with the plaintiff and believe that it may well be time to change our rule, as an intermediate appellate court we are bound to follow the precedent set by our Supreme Court.").

31. *Johnson*, 236 So. 2d at 218. In a concurring opinion written by Justice Knoll of the Louisiana Supreme Court, the justice criticized the majority opinion and explained, "[J]urisprudence constante does not give the Court license to perpetuate error as we are bound under our Constitution and the Civil Code to uphold and abide by the law." *Borel*, 989 So. 2d at 81 (Knoll, J., concurring).

32. See *infra* part V.

decisis.

### III. WHY LOUISIANA COURTS RELY SO HEAVILY ON PRIOR DECISIONS

If we do not recognize stare decisis in Louisiana, then why do Louisiana courts rely so heavily on prior decisions? First, many of the lawyers practicing law in Louisiana and the judges serving on the Louisiana courts were taught about law using the casebook method. This method of study requires students to read cases in which the statutory law has been interpreted or in which the common law has developed. This method places an emphasis on the value of prior decisions, even if those prior decisions are being used as examples of how the law has previously been interpreted. When examined in these courses, students rely on cases for statements of the law. As lawyers, logically, these same students will rely on cases, and when they become judges, it is likewise expected that they will use the same method of analysis.

Second, increased ease of access to decisions as well as increased accuracy and reliability in the reporting of decisions makes reviewing prior decisions easier than it ever was in the past. Many United States courts now publish their own opinions on their websites within a relatively short time after they are written.<sup>33</sup> In addition, multiple companies publish court opinions, both in print and online. These publishers have made it big business to accurately report decisions; moreover, they have added features to the opinions, such as headnotes and summaries, which make the opinions even more accessible to researchers. The opinions are catalogued and indexed, making them relatively simple to locate them.

Moreover, electronic legal research, available on the Internet on both free and fee-based services, makes searching a multitude of sources simultaneously a reality. Search results are often not limited to only one type of source, but the results often direct the researcher to multiple sources, including those considered mandatory authority, such as a Louisiana statute in a Louisiana case, and those secondary sources that perhaps ordinarily would not be considered an authority at all, such as a blog post. Researchers who have gathered citations to this variety of sources

---

33. For example, Louisiana Supreme Court decisions are regularly published on the court's website. See LA. SUPREME COURT, [www.lasc.org](http://www.lasc.org). Additionally, the court's website provides links to all Louisiana appellate court websites where opinions may also be found. *Id.*

then feel compelled to present the sources and the related arguments to the court when they support the researchers' positions. Once the courts rely on the arguments and perhaps the non-authoritative sources, other lawyers then begin to rely on these sources, making citation to the sources an acceptable practice. Early on, this is probably what happened in Louisiana with the citation of cases taking hold as lawyers gained greater access to prior decisions and began citing them to courts. As the courts saw the logic in relying on these prior decisions, the courts began citing them in opinions until the prior decisions gained power as authorities to be considered and followed.

This phenomenon of treating non-authoritative sources as authority is not unique to Louisiana courts. Several commentators have written about the influence that electronic research has had on the use of a variety of sources by United States courts.<sup>34</sup> Both Professors Margolis and Schauer have noted the rise in courts citing to traditionally non-authoritative sources, and they have attributed this practice in part to the availability of a variety of sources to the lawyer with an Internet connection and the use by courts of these sources in judicial opinions.<sup>35</sup> Commenting on the increase of citation to secondary sources by courts in the twentieth century, Professor Margolis explained, "[t]he very citation of secondary sources validated their use as authority. Once one judge cited a secondary source, other judges and lawyers became less hesitant to do so, and the effect snowballed until the reliance on secondary sources as authority became common."<sup>36</sup> In the same way, Louisiana courts' increased reliance on prior decisions over the years validated their use as authority, and reliance on prior decisions has become common and expected.

Third, courts are writing well-reasoned opinions and providing thorough analysis to support their decisions. Opinions written by judges in the United States, including Louisiana, tend to not only announce decisions, but also recount the facts of the case, discuss the jurisdiction's law and prior decisions, and provide a complete analysis of the legal issue before the court. These opinions then serve as good resources for judges faced with

---

34. See, e.g., Ellie Margolis, *Authority Without Borders: The World Wide Web and the Delegalization of Law*, 41 SETON HALL L. REV. 909 (2011); Frederick Schauer, *Authority and Authorities*, 94 VA. L. REV. 1931 (2008).

35. Margolis, *supra* note 34, at 912, 918; Schauer, *supra* note 34, at 1957-58, 1960.

36. Margolis, *supra* note 34, at 918.

making new decisions in new cases. Because of their thorough explanations and analysis, opinions often play the role that treatises and other authoritative secondary sources played in the past and still play to some extent. Lawyers in Louisiana almost always cite prior decisions to courts to support their arguments,<sup>37</sup> and courts almost always rely on and cite to prior decisions in their opinions.

Fourth, the opinions written to support prior decisions have served to document custom. As was previously noted, custom is a source of law in Louisiana. Originally, the term “custom” embodied the French and Spanish customary law being used in Louisiana at the time of the Louisiana Purchase because the inhabitants of the territory were not willing to give up their laws and way of life for a purely English-American set of laws.<sup>38</sup> Many of the laws, including many of the customary laws, were then codified in the Code of 1825 or were subsequently codified in later code revisions and statutory compilations.<sup>39</sup> As time went on, true customary law in Louisiana faded. A search for a reference to custom in modern Louisiana court decisions yields very few cases.<sup>40</sup> In more modern times, court decisions provide a record of custom, or “how things are done,” in Louisiana. When courts find gaps in the Code, they look to prior decisions to determine what perhaps can be considered modern custom, much like common law courts look to prior decisions and refer to it as common law.<sup>41</sup>

---

37. Algero, *supra* note 6, at 816.

38. PALMER, *supra* note 11, at 10-12, 58-59, 70-71, 78-79; SHAEL HERMAN, *THE LOUISIANA CIVIL CODE: A EUROPEAN LEGACY FOR THE UNITED STATES* 28-32 (1993).

39. PALMER, *supra* note 11, at 58-62, 64; William Thomas Tete, *The Code, Custom and the Courts: Notes Toward a Louisiana Theory of Precedent*, 48 TUL. L. REV. 1, 12 (1973).

40. MACK E. BARHAM, *A RENAISSANCE OF THE CIVIL LAW TRADITION IN LOUISIANA, IN THE ROLE OF JUDICIAL DECISIONS AND DOCTRINE* 38, 49 (Joseph Dainow ed., 1974). Modern examples of references to custom by Louisiana courts are few, perhaps because custom cannot abrogate legislation and many issues are governed by legislation. See LA. CIV. CODE ANN. art. 3 (2011). For example, custom was considered and rejected by a Louisiana court when the court determined that legislation governed the issue in *Baton Rouge Union of Police, Local 237 v. Baton Rouge*, 96-CA-1976, (La. App. 1st Cir. 1997); 696 So. 2d 642, 645. A search for a true reliance on custom in Louisiana cases decided in the last 100 years revealed that custom was primarily discussed and recognized in cases to clarify ambiguities in contracts. See, e.g., *Johnson v. McLean*, 19 So. 2d 581 (La. App. Orleans 1944) (discussing the custom for real estate commissions); *Miramón v. Carreras*, 11 So. 2d 638 (La. App. Orleans 1943) (discussing the custom for charging for additional building materials); *Terrell v. Alexandria Auto Co.*, 125 So. 757 (La. Ct. App. 1930) (discussing the custom for delivery of a car).

41. *Doerr v. Mobil Oil Corp.*, 2000-0947 (La. 2000); 774 So. 2d 119, 129; see also

Is this increase in the value of prior decisions a bad thing? You and I operate in this way every day. We are attending a conference in Jerusalem, a very old city with much history. Many of us are not frequent visitors to Jerusalem, so we may have considered bringing souvenirs back to our family and friends, maybe even our co-workers. How wide is the circle of people for whom you will bring souvenirs? Do you bring home a souvenir to your assistant at your law school that may have even helped you prepare for the conference? How do you decide?

We might consider enacted law or written guidelines. Wouldn't it be nice if in life we had enacted law or written guidelines to tell us things like to whom we should bring souvenirs? Then, we wouldn't disappoint anyone. Some people look to written etiquette rules for such things as what to bring to a dinner party;<sup>42</sup> maybe there are written rules somewhere about souvenirs. Maybe your school has written guidelines about bringing back souvenirs to co-workers; maybe not. So, we might consider custom. What do I usually do? What do my co-workers who travel usually do? My custom regarding my assistant has been that I bring her a souvenir when I travel outside of the United States. I suspect I began doing this because I saw some of my colleagues doing the same thing. I followed what I surmised to be the custom.

We might also look to precedent; this reflection also involves looking to what we and our colleagues have done in the past, similar to a consideration of custom. As Professors MacCormick and Summers have explained, "[a]pplying lessons of the past to solve problems of the present or the future is a basic part of human reason."<sup>43</sup> In many of our day-to-day decisions, we try to act consistently with our prior behavior—to be predictable. Acting in this manner seems fair to everyone and keeps people we deal with content. When we act differently, we call it a surprise, which can be a good thing or a bad thing.

Courts use prior decisions or precedents in much the same way, as models for later decisions. Courts are motivated to correctly and consistently interpret the law and provide some certainty and stability for those parties operating in a

---

Tete, *supra* note 39, at 12.

42. See, e.g., EMILY POST, [www.emilypost.com](http://www.emilypost.com) (last visited Mar. 29, 2012).

43. INTERPRETING PRECEDENTS: A COMPARATIVE STUDY 1 (D. Neil MacCormick & Robert S. Summers eds., 1997).

jurisdiction.<sup>44</sup> Thus, courts in the United States, including Louisiana, as well as courts in jurisdictions around the world, almost always consider prior decisions when interpreting the law, whether they state that they are relying on these decisions or not. Commentators have characterized this reliance on the work and reasoning of earlier judges as a way for courts to “share power across time,” thus democratizing the judiciary and allowing current judges to be assisted by their predecessors.<sup>45</sup> Reliance on precedent helps to ensure stability in the law so that it will not change based on the whim of one or a handful of judges. Interestingly, records reveal that even in the nineteenth century Louisiana courts were citing to decisions of the French *Cour de cassation* when interpreting provisions of Louisiana law that were based on French law.<sup>46</sup>

#### IV. A SPECTRUM OF THE VALUE OF PRECEDENT

Courts around the world consider precedent in varying degrees. We can characterize their reliance on prior decisions or precedent using three basic models: on one end of the spectrum, strict stare decisis; on the other end of the spectrum, *jurisprudence constante*; and in the middle, a blended version of these two which seems to describe what goes on “in fact” in Louisiana, in the United States federal system, in the rest of the United States, and in many parts of the world.

Strict stare decisis refers to a system of valuing prior decisions as the law, binding later courts that face similar issues. Judicial systems that employ strict stare decisis require subordinate courts to follow the decisions of higher courts within

---

44. INTERPRETING PRECEDENTS: A COMPARATIVE STUDY 2 (D. Neil MacCormick & Robert S. Summers eds., 1997); *see also* INTERPRETING STATUTES: A COMPARATIVE STUDY 487 (D. Neil MacCormick & Robert S. Summers eds., 1991) (concluding that, together with any applicable statutes, “precedents are the most frequently used materials in judicial opinions,” regardless of whether precedents are considered to have the force of law or not); *see also* *Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876, 911-12 (2010) (explaining that precedents are to be respected); *Borel v. Young*, 2007-0419 (La. 11/27/07); 989 So. 2d 42, 65 (emphasizing the value of precedent to maintain certainty and stability in the law); Francesco G. Mazzotta, *Precedents in Italian Law*, 9 MICH. ST. U.-DCL J. INT’L L. 121, 153 (noting that precedents are the most important “justificatory material used in judicial opinions”).

45. Deborah G. Hankinson, *Stable, Predictable, and Faithful to Precedent: The Value of Precedent in Uncertain Times*, <http://www.tex-app.org/articles/HankinsonPrecedent2007.pdf>, at 1, 4 (2007) (citing Hon. D. Arthur Kelsey, *The Architecture of Judicial Power: Appellate Review and Stare Decisis*, JUDGES’ JOURNAL, at 9-10 (Spring 2006)).

46. PALMER, *supra* note 11, at 67 & n.43.

a judicial system; sometimes the requirement is to follow the decisions of the higher courts to which the subordinate courts' decisions are appealable.<sup>47</sup> In some jurisdictions, courts are expected to follow their own decisions as well, with some latitude given. One decision alone is said to make law that must be followed in subsequent cases.<sup>48</sup>

On the other end of the spectrum is a system in which courts may loosely consider prior decisions, but they do not make law. A doctrine such as *jurisprudence constante* directs courts to consider a long line of consistent interpretations of the law as persuasive and entitled to great weight. These decisions do not bind the court to a particular interpretation of the law, nor do they make law. In fact, in some jurisdictions employing a version of *jurisprudence constante*, courts are forbidden from citing to a prior decision as the basis for a current decision.

For example, commenting on the use of prior decisions in France, Mr. Alain Lacabarats, president of the Third Civil Chamber of the *Cour de cassation* wrote: "The law of precedent, i.e., conferring a required value on prior legal decisions rendered in similar cases, does not exist in French law."<sup>49</sup> He further explained that even decisions of the *Cour de cassation* bind only the litigants involved in the litigation and may not bind third parties or courts.<sup>50</sup> Article 455 of the French Code of Civil

---

47. See, e.g., *Hohn v. United States*, 524 U.S. 236, 251 (1998) ("Stare decisis is the 'preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.')" (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)); *Mountain View Coach Lines, Inc. v. Storms*, 476 N.Y.S.2d 918 (N.Y. App. Div. 1984) (stating that trial courts in New York are formally bound to follow decisions rendered by New York appellate courts). See also James L. Dennis, *Interpretation and Application of the Civil Code and the Evaluation of Judicial Precedent*, 54 LA. L. REV. 1, 4-5 (1993); Alvin B. Rubin, *Hazards of a Civilian Venturer in Federal Court: Travel and Travail on the Erie Railroad*, 48 LA. L. REV. 1369, 1371 (1988).

48. Rubin, *supra* note 47, at 1371.

49. Lacabarats, *supra* note 5, at 80.

50. Lacabarats, *supra* note 5, at 80. See also Michel Troper & Christophe Grzegorzczuk, *Precedent in France*, in INTERPRETING PRECEDENTS: A COMPARATIVE STUDY 115 (D. Neil MacCormick & Robert S. Summers, eds., 1997) ("There is no formal bindingness of previous judicial decisions in France. One might even argue that there is an opposite rule: that it is forbidden to follow a precedent only because it is a precedent."); *id.* at 111-12 (quoting F. Zenati, *La Jurisprudence*, Paris: Dalloz 102 (1991)) ("[T]he very idea that a judge could search for the base of his decision in a prior judgment is literally unthinkable in a legal system based on statutory Law."); Catherine Valcke, *Quebec Civil Law and Canadian Federalism*, 21 YALE J. INT'L L. 67, 84 (1996) ("A lower court in France has no formal duty to follow a higher

Procedure requires courts to explain the reasoning behind their decisions and makes a judicial decision based solely on a precedent illegal.<sup>51</sup> Italy and Spain are civil law jurisdictions that are similar in that prior decisions do not make law, and they cannot provide the sole basis for a court's decision.<sup>52</sup>

The model in the middle of the spectrum has a combination of characteristics at each end of the spectrum noted above, and it seems to exemplify the model used "in fact" in many jurisdictions worldwide, including the model used in Louisiana and in many jurisdictions of the United States.

Moving from the strict stare decisis side of the spectrum, we see examples of courts that render decisions that have the force and effect of law, but that also accept the obligation to review past decisions to ensure that prior interpretations of the law are correct. For example, the United States Supreme Court and other federal and state courts in the United States have valued precedent but have often employed a flexible model of stare decisis.<sup>53</sup> The doctrine of stare decisis, as well as the hierarchical structures of the court systems, typically require the lower courts in those jurisdictions to be bound by the decisions of the courts to which the lower courts' decisions are appealable and require courts to be bound by their own prior decisions.<sup>54</sup> Despite the

---

tribunal's decisions, and the highest court, the *Cour de cassation*, enjoys full power to renounce its own decisions."). *But see* Lacabarats, *supra* note 5, at 83 (recognizing that even though the decisions of the courts are not binding on other courts, "in practice, courts have a natural tendency to conform spontaneously to the case law of the *Cour de cassation*, to guarantee citizens a uniform application of the law.").

51. Troper & Grzegorzczuk, *supra* note 50, at 115, 117-19 (citing N.C.P.C. art. 455). The article provides the following: "The judgment must state succinctly the respective claims of the parties and their arguments (*moyens*); it must be reasoned (*motive*)." N.C.P.C. art. 455 (George A. Bermann & Vivian Grosswald Curran trans., Juris Publishing, Inc. 1998). *See also* C.C. art. 5 (George A. Bermann & Vivian Grosswald Curran trans., Juris Publishing, Inc. 1998) ("Judges are forbidden to decide by way of a general and rule-making (*réglementaire*) decision the cases submitted to them.").

52. Michele Taruffo & Massimo La Torre, *Precedent in Italy*, in INTERPRETING PRECEDENTS: A COMPARATIVE STUDY 141, 154 (D. Neil MacCormick & Robert S. Summers eds., 1997) (discussing Italy), and Alfonso Ruiz Miguel & Francisco J. Laporta, *Precedent in Spain*, in INTERPRETING PRECEDENTS: A COMPARATIVE STUDY 259, 260, 269 (D. Neil MacCormick & Robert S. Summers eds., 1997).

53. Mortimer N.S. Sellers, *The Doctrine of Precedent in the United States of America*, 54 AM. J. COMP. L. 67, 71, 74, 86-88 (2006).

54. *See, e.g.*, *Hohn v. United States*, 524 U.S. 236, 251 (1998). The Court in *Hohn* further explained that its decisions "remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." *Id.* at 252-53. *See also* *Gavin v. Chernoff*, 546 F.2d 457,

apparent rigidity of this doctrine, the United States Supreme Court has the express power to overrule its own decisions, as do most of the state supreme courts. Precedent is valued and respected, but American courts recognize that blind adherence to precedent that is not workable, antiquated, or poorly reasoned is a mistake.<sup>55</sup> The United States Supreme Court described this flexibility and the value of precedent in the United States as follows:

Stare decisis is the preferred course, because it promotes the evenhanded, predictable and consistent development of legal principles, fosters reliance on judicial decision, and contributes to the actual and perceived integrity of the judicial process. Adhering to precedent is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right. Nevertheless, when governing decisions are unworkable or are badly reasoned, this Court has never felt constrained to follow precedent. Stare decisis is not an inexorable command; rather it is a principle of policy and not a mechanical formula of adherence to the latest decision.<sup>56</sup>

American courts have a record of following precedent, but they also have a record of revisiting decisions and the reasoning behind those decisions to ensure that the Constitution or other laws are being properly interpreted and applied. United States Supreme Court Chief Justice Roberts noted that were it not the Court's practice to revisit precedent when some special justification warrants further review, certain outdated practices and laws might still exist in the United States, such as segregation and government wiretapping without the need for a warrant.<sup>57</sup> He explained, "[S]tare decisis is not an end in itself. It is instead 'the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion.'"<sup>58</sup>

Moving from the other end of the spectrum, where courts are

---

458-59 (1st Cir. 1976) (invoking stare decisis to follow an earlier opinion when "appellants essential arguments remain much the same as those considered and previously rejected, and there were no compelling new reasons and no change in circumstances justifying reconsideration of the previous decision").

55. *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 911-12 (2010).

56. *Payne v. Tennessee*, 501 U.S. 808, 827-28 (1991).

57. *Citizens United*, 130 S. Ct. at 920 (Roberts, C.J., concurring).

58. *Id.* at 920 (quoting *Vasquez v. Hillery*, 474 U.S. 254, 265 (1986)).

not bound by prior decisions and are not to rely on prior decisions as authority, we see courts that consider prior decisions when interpreting and applying the law. In France, Italy, and Spain, as may be the case in many other traditional civil law and mixed jurisdictions, prior decisions, especially by reviewing courts, often are very influential and persuasive to subordinate courts, even though they cannot alone provide the authority for a court's decision.<sup>59</sup> Similarly, Louisiana courts move toward the middle of the spectrum from the *jurisprudence constant* side or the civilian side, where court decisions do not make law.

### V. LOUISIANA: STRIKING THE RIGHT BALANCE

As previously mentioned, prior decisions are not a recognized source of law in the Louisiana Civil Code. Louisiana courts are to look to legislation and custom as the sources of law, and in the absence of those, they are to look to equity.<sup>60</sup> Because Louisiana courts are moving on the spectrum from the civil law side, their decisions are almost always grounded in legislation. However, prior decisions are so valued by the courts that their decisions are also almost always supported by prior decisions.

Several years ago, I set out to determine the *real* sources of law in Louisiana by going to the people who apply the law on a daily basis and who hear lawyers argue about the meaning of the law on a daily basis; I sent a survey to Louisiana state court judges. I use the term "real" to focus on the law in practice as opposed to the law in theory.

The results of a survey I conducted on the sources of law and the value of precedent in Louisiana confirm the strong influence of precedent as well as a sense by the majority of responding judges that district courts and appellate courts are bound by Louisiana Supreme Court decisions.<sup>61</sup>

A copy of the survey was sent by mail to the seven Louisiana Supreme Court justices, fifty-three Louisiana appellate court judges, and two hundred twenty Louisiana district court judges. Judges were not compensated for their participation in the

---

59. Lacabarats, *supra* note 5, at 83-86 (discussing the value in fact of French decisions); Mazzotta, *supra* note 44, at 137, 141, 153 (discussing the value in fact of Italian decisions); Miguel & Laporta, *supra* note 52, at 274-75, 288 (discussing the value in fact of Spanish decisions).

60. LA. CIV. CODE ANN. arts. 1, 4 (2011).

61. For a copy of the survey and responses, see Algero, *supra* note 6, at 815-22.

survey. Participation in the survey was voluntary. One hundred nineteen Louisiana district court judges, or 54% of Louisiana district court judges, responded to the survey, and thirty-one Louisiana appellate court judges, or 58% of Louisiana appellate court judges, responded to the survey. The responding judges represented a range of experience as Louisiana state court judges, with 22.6% serving for less than five years, 30% serving for five-to-ten years, 22% serving for ten-to-fifteen years, and 25.3% serving for more than fifteen years.

When it came to identifying the “sources,” both primary and secondary, that attorneys most frequently cite to the court as authority for their arguments, the judges’ responses indicated that the frequency with which attorneys rely on prior decisions did not differ much regardless of whether the attorneys’ arguments were based on the Louisiana Civil Code, the Louisiana Constitution, or other Louisiana enacted law. When arguing before the courts, most attorneys rely on prior Louisiana court decisions to support their arguments—89.6% for arguments based on the Civil Code and 84.4% for arguments based on the Louisiana Constitution and other Louisiana enacted law.

As for the “value” attributed to prior decisions by attorneys arguing before Louisiana courts, the judges indicated that attorneys put a high value on such decisions, especially when the Louisiana Supreme Court has weighed in on the issue. When relying on a line of decisions that includes at least one Louisiana Supreme Court decision, the courts indicated that about 80% of attorneys either always or almost always argue that the court is bound to follow the line of decisions. The numbers change somewhat when attorneys rely on a line of decisions that includes at least one decision from the Louisiana appellate court in which they are arguing or to which an appeal would be brought. In those cases, 70.2% of attorneys always or almost always argue to the court that it is bound to or must follow the line of decisions interpreting the Civil Code, and 66.6% of attorneys always or almost always argue to the court that it is bound to or must follow the line of decisions interpreting the Louisiana Constitution or other Louisiana enacted law.

Similarly, after enacted law, most judges turn to prior court decisions to determine applicable Louisiana law. If an issue is apparently not governed by Louisiana enacted law, 83.88% of the appellate court judges indicate that they would rely on prior decisions of Louisiana state courts to guide their decisions, and

85.47% of state district court judges would do the same. In response to this same question, assuming the absence of enacted law, most judges would also consider Louisiana enacted laws that govern analogous or similar issues—70.9% of appellate court judges and 77.77% of district court judges; a legal treatise or law review article—70.9% of appellate court judges and 62.39% of district court judges; and equity—51.6% of appellate court judges and 57.26% of district court judges.

This reliance on prior decisions is strong, even when enacted law exists, to the point that Louisiana Supreme Court decisions are considered binding by the appellate and district courts, confirming what a review of the reported cases on the value of decisions disclosed.<sup>62</sup> The majority of judges responding to the survey indicated that they did not consider it within their power and authority to overrule a Louisiana Supreme Court decision interpreting Louisiana enacted law even if they believed that the Supreme Court had incorrectly interpreted the law. Of the appellate court judges, 83.87% indicated that they could not overrule the Supreme Court, and 81.89% of the district court judges indicated the same. On the other hand, the majority of the courts do not feel bound by their own prior decisions interpreting Louisiana enacted law, with 67.74% of appellate court judges and 90.9% of district court judges indicating that they consider it within their power and authority to overrule a decision of their own court that they believe incorrectly interpreted the Louisiana Civil Code.

Perhaps reflective of the above beliefs, one experienced Louisiana appellate court judge added this comment to his survey responses:

As you know, in a civilian system there is no such thing as precedent. It is *jurisprudence constante*, a different thing entirely. I think we Louisiana judges sometimes take the easy way out: if we can find a single intermediate appellate court decision on the subject, we will apply it to our issue as though it has the force of law. When we do so, we are giving that decision the effect of “precedent.”

This same judge indicated that intermediate appellate court judges consider themselves bound by Louisiana Supreme Court decisions but not by decisions of other courts of appeal.

---

62. Algero, *supra* note 6, at 798-807.

Finally, the judges nearly unanimously recognized a respect for prior decisions when they indicated that if they chose not to follow a relevant line of decisions, which included opinions rendered by their court or a court to which their decision would be appealed, they would either explicitly indicate that they were overruling precedent and explain why or distinguish the case they were deciding from the line of decisions. One hundred percent of the appellate court judges responding would do one of the above, rejecting the options of not mentioning the line of decisions or giving it little mention. Of the district court judges, 98.7% of those responding would do one of the above, with 1.73% of judges indicating that they would not mention the line of decisions or give it little mention.

## VI. CONCLUSIONS

The Louisiana courts have stayed true to their civil law roots by recognizing the primacy of enacted law. The Louisiana Supreme Court has consistently reviewed the meaning of enacted law when it is faced with issues brought under the law. In fact, currently sitting Louisiana Supreme Court justices have been vigilant about employing methodology that involves beginning analysis with enacted law and revisiting prior interpretations of the enacted law under consideration. This practice of reinterpreting the law allows the law to remain a living law that is flexible and adapts to changes in society.

Louisiana intermediate appellate courts and district courts, however, recognizing their subordinate status to the Louisiana Supreme Court, do not tend to revisit statutory interpretation when the Louisiana Supreme Court has already decided a case interpreting enacted law. Because of their subordinate positions within the court system, they treat Louisiana Supreme Court decisions as binding. From time to time, those courts may indicate that they are bound by the supreme court and rule consistently with the its interpretation, while at the same time urging the court to review the issue. On rare occasions, appellate courts will reinterpret a statute differently from a prior supreme court interpretation, but usually only when unusual circumstances exist, such as when the precedent is outdated; it has been questioned in other cases; the underlying legislation has been amended; or exceptions have been created that have diluted the precedent's strength. District courts usually consider the decisions of the appellate court to which their decisions are appealed to be binding to them. This deference provides for

stability and predictability.

The behavior of Louisiana courts is similar to the behavior of the United States Supreme Court and the subordinate federal courts, especially when the courts are interpreting the Constitution, a state constitution, or enacted law. These courts each begin from a different end of the spectrum, evaluating precedent using the principle of *stare decisis* or the principle of *jurisprudence constante*. Nevertheless, these courts take advantage of prior analysis conducted by other courts, even considering analysis by courts outside of their jurisdictions. They recognize the value of prior decisions, which often include extensive and well-reasoned analysis similar to what might be found in a legal treatise and which provide records of practices similar to custom in earlier times. Courts around the world, including courts in Louisiana, are taking advantage of a resource that allows them to strike the right balance between predictability and certainty, and flexibility and adaptability.