

Romance Legal Family

by Claudia Lydorf

The Romance legal family refers to a group of countries (France, Spain, Italy, Belgium, Portugal, Romania and the Netherlands) whose legal systems and practices share certain common defining characteristics. Established during the expansion of France under Napoleon Bonaparte, codified French law in the form of the "Code civil des Français" (1804) was disseminated in French-speaking countries and throughout the sphere of French influence and rule. As a result, some of the legal systems found in Latin America exhibit a strong influence of Napoleonic legislation. The Napoleonic codifications also acted as agents of transfer for the ideas of the French Revolution and were an important stimulant for the growth of political Liberalism. The significance of the influence of the Napoleonic codifications on the subsequent nature and development of the Romance legal family cannot be over-stressed.

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Introduction

A member of the European continental legal family¹ and defined in opposition to systems of common law, the Romance legal family is part of the system of civil law. The Romance legal family is made up of France, Spain, Italy, Belgium, the Netherlands, Portugal and Romania; the decisive influence on the private law regime of these countries being that of the French *Code civil* (→ Media Link #ab) (1804).² The most important changes wrought within this legal family came from the development of private law in France, Spain and Italy. The Romance legal family should be regarded as separate from the Scandinavian and the Germanic legal family (→ Media Link #ac), although the latter was subject to considerable influence from the Romance legal family in the 19th century.³ Moreover, the French *Code civil* and the Spanish *Código civil* also enjoyed a wide reception in other Francophone and Spanish-speaking parts of the world including Québec and parts of central and South America (→ Media Link #ad) such as Mexico.⁴

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The Development of the Romance Legal Family: The Cases of France and Spain

Since antiquity, the development of the French legal system was subject to the influence of Roman law. The Roman conquest of Gaul established the jurisdiction of Roman law on French soil, and components of Roman law were incorporated in the local legal system even at that early stage. Academic interest in, and reception of, Roman law in the 11th and 12th centuries by Italian and French legal scholars shaped the development of the *Code Napoléon* as did the legal tradition of Southern France (*pays de droit écrit*), which itself had developed out of Roman law.⁵ However, the pre-revolutionary French legal system (*Ancien droit*) was highly fragmented – forced as it was, to take into account Roman-influenced law, customary law (*Coutumes*), canon law (Church law) as well as a number of royal *Ordonnances*. The first centralized attempt to collect and unify French law was the record of all the *Coutumes* as ordered by Charles VII (1403–1461) (→ Media Link #ae).⁶ After the completion of this undertaking in the 16th century, French jurisprudence experienced a high point during the age of humanist jurisprudence (*mos gallicus*). It was within this context that France

witnessed the increasing tendency to focus the system of justice more strongly on the monarch, combined with the attempt to form a unitary system of civil law.⁷ It is especially noteworthy that in this period the universities focused exclusively on teaching Roman and canon law. This situation changed only in the 17th century with the royal edict issued in 1679 by Louis XIV (1638–1715) (→ Media Link #af) establishing a university chair at Paris to teach the French laws contained in the *Ordonnances* and *Coutumes*,⁸ which, it was hoped, would strengthen the position and status of national law against the universally valid Roman and canon law. This early-modern French law – following the contents of the *Coutumes* – focused on private property, the consensualism⁹ derived from canon law and tortious liability.¹⁰ Attempts to unify the elements of Roman law with the customary law of the *pays de droit coutumier* continued during the period of absolutism.¹¹ The Enlightenment of the 17th and 18th centuries saw the growing dominance of natural rights theories, and increasing efforts to establish a *droit commun de la France*. Exemplary of this movement was Robert-Joseph Pothier (1699–1772) (→ Media Link #ah) who, in his work *Traité des obligations* (1761) (→ Media Link #ai), attempted to solve legal problems by producing a synthesis of Roman and French law. The verbatim adoption of some of his writings in the *Code civil* ensured his lasting influence on the codification of 1804, especially on its dogmatic foundations.¹² The same was true of Jean Domat (1625–1696) (→ Media Link #aj) and his five-volume *Les loix civiles dans leur ordre naturel* (1689–1694) (→ Media Link #ak), in which he attempted a systematization of the *Corpus Juris Civilis* to make it resemble a textbook on natural law.¹³

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The French revolutionary idea of equality (expressed as equality before the law) gave added impetus to the campaign for a unified civil code and a corresponding demand was anchored in the constitution of 3 September 1791: "Il sera fait un Code de lois civiles communes à tout le royaume."¹⁴ Despite these developments, a number of subsequent attempts to draft such a code (especially noteworthy was the undertaking of Jean-Jacques Régis de Cambacérès (1753–1824) (→ Media Link #al)), all failed.¹⁵ In 1800, Napoleon Bonaparte (1769–1821) (→ Media Link #am) summoned a commission¹⁶ to draft what was eventually to be adopted – after overcoming a number of procedural difficulties – on 21 March 1804 as the *Code civil des Français*. This first ever French civil code became known after 1807 as the *Code Napoléon*.¹⁷

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The *Code Napoléon* marked the final departure from laws that were transmitted orally and the move to a legal system based on written law.¹⁸ It was a mixture of revolutionary innovation and pre-revolutionary tradition, containing as it did, both passages taken verbatim from Pothier and Domat as well as a number of elements drawn from Roman law and the *Coutumes*. Moreover, the revolutionary concern of producing both abstract regulations and ensuring its wide accessibility to a lay public produced a code lacking somewhat in conceptual precision. As a result, the *Code* still relies heavily on precedence in the exegesis of its provisions. The legal and scholarly community responded very positively to its implementation.¹⁹

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The expansion of France during the Napoleonic Wars (→ Media Link #an) spread the *Code civil* first to Belgium,²⁰ the Kingdom of Italy, the German states on the left bank of the Rhine (the Confederation of the Rhine) and Spain, where it was either studied or applied. It also served as the model for later codifications of European civil law.²¹ Indeed, such was the nature of its long-term influence that it eventually divided the continent into the spheres of common law and civil law. Surviving Napoleon's military defeat and abdication (Bourbon Restoration in 1814), the *Code Napoléon* was retained not only in France, but Germany, Italy and the Netherlands.²² The Dutch received their own civil code in 1838 which followed the French model. Italy and Québec followed suit with their own (French-inspired) codifications of 1865²³ and 1866²⁴ respectively.

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Not unified until the third quarter of the 19th century the legal situation on the Italian peninsula represents a special case. The Italian states retained a plurality of legal systems in which the French Code remained in force, either directly or indirectly until the post-unification promulgation of the *Codice civile*. Although the *Code Napoléon* was revoked following the restoration of 1814, such was its influence on the post-restoration Italian legal codifications that whole passages of the *Code Napoléon* were adopted verbatim into the new Italian compendium of civil law.²⁵ The *Codice civile italiano*, itself exhibiting the greatest debt to the French Code amongst the Romance legal family, remained in force until 1942.²⁶

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Portugal introduced the *Código civil* (based on the French civil code) in 1868; Spain followed suit in 1889.²⁷ The development of Spanish civil law to a unitary code involved a long history. In the Middle Ages, Spanish law was subject to a number of influences including the *Reconquista*, Visigothic legal texts (*Lex Visigothorum*) and the development of a number of Christian systems of rule. It also owes a debt to Scholastic natural law (*escuela ius naturale*), in which the school of Salamanca attained an important place in the 15th century.²⁸ A first attempt made in 1821 to produce a codification in the *Código Civil de España* was dashed by the coup d'état led by General Rafael del Riego (1784–1823) (→ Media Link #ap). Moreover, the strong tradition of Spanish particularism contrasted with French centralism in militating against any project of legal harmonization and reform.²⁹ 1851 saw a fresh attempt to produce a civil code. Influenced as these efforts were by the *Code Napoléon*, the reformers felt it necessary to establish the "Spanish roots" of their project so as to sell it as a truly national undertaking.³⁰ Nevertheless, the project required some 37 years to reach completion and was finally presented on 11 May 1888. The *Código Civil de España* came into force in 1889. Even then, the codification was only partially valid (from the *Título Preliminar* to title 4 of the first book) for the whole of Spain, whilst the remaining books and titles acted merely as a supplement to Spanish customary law (the *Fuero*). Thus with the exception of the conflict of laws,³¹ marriage law and provisions regulating competing legal ordinances,³² Spanish civil law was characterized by extensive disunity. The debt which the *Código Civil* owed to the *Code civil* was considerable: of its 1975 articles, 250 were taken directly from the Napoleonic codification.³³ However, despite this influence, the Spanish code differed in one respect. Extended by the addition of a fourth book, the Spanish codification provided for a regulation of contract law. Taking ownership as its starting point, French law in contrast, was characterized by an unclear regulation of the obligations which it generated.

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The Historical Significance of the Napoleonic Legal Codes

Not restricted to France, Napoleon's project of legal unitarization and administrative centralization was to be extended to all his conquered territories. One product of this ambitious plan was the promulgation of the Napoleonic statutes, known as the *cinq codes*,³⁴ comprising the *Code civil*, *Code de commerce*, *Code de procédure civile*, *Code pénal* and the *Code d'instruction criminelle*. In issuing this collection, the French legal reformers involved sought to reconcile the ideas of (rationally-motivated) natural law and the aims of the French Revolution (→ Media Link #aq) with the provisions of French law.³⁵

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An investigation of the historical significance of each of the individual *Codes* would exceed the scope of this investigation. Nevertheless it is important to underline their extensive influence, not only on European history.³⁶ This applies especially to the role of constitutional law and the function of the *cinq codes* as the guarantor of the basic civic rights³⁷ outlined in the Declaration of Human Rights, which itself was later to attain truly international significance. One of the five codes was the *Code civil des Français* from 1804, which was to advance to become the definitive codification of the Romance legal family. Following the French Revolution, legislative power was vested in the Directory. Despite working with the Convention to compile four drafts for a civil code before 1799, none was produced.

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In accordance with his Roman model of authority,³⁸ Napoleon attached great importance to the codification of civil law and made great personal efforts to this end following his accession to power in 1799 (→ Media Link #ar).³⁹ Responding to his consular order issued in August 1800, the Ministry of Justice assembled a four-man commission of jurists chaired by the President of the Court of Cassation and charged with producing a new draft.⁴⁰ Completing their work in less than twelve months, they submitted their proposal to the Courts of Appeal (*tribunaux d'appel*), the Court of Cassation (*tribunal de cassation*) and finally, the Council of State (*Conseil d'Etat*), itself chaired by Napoleon in his capacity as First Consul.⁴¹ However, the draft was rejected by Parliament (*Tribunat*) in January 1802 (by a margin of three votes), where Napoleon's enemies were in the majority.⁴² After purging his parliamentary opponents, Napoleon ensured that the draft was accepted in a number of votes held between 5 March 1803 and 21 March 1804, after which it passed into legislation.⁴³ It is particularly important to note that the Napoleonic Code was the first ever European codification that gave expression to the French Revolutionary ideas of legal unity, equality before the law, freedom of property and individual liberty.⁴⁴

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There were two further initiatives aimed at a fundamental reform of French civil law as manifested in the *Code Napoléon*. Reacting to the promulgation in 1904 of the *Bürgerliche Gesetzbuch* (BGB), the German civil code, a commission was summoned to investigate the new methodological approach to legislation pursued in Germany. A further commission was convened following the fall of the Vichy regime and the liberation of France in 1945. Both initiatives failed in their aim of a root and branch reform, satisfying themselves instead with the incorporation of a few supplementary provisions and performing a restricted number of minor reforms. The original numbering of the articles was largely maintained.⁴⁵ An inquiry from 1963 found that up to three-quarters of the Code remained in force; Napoleon's original codification thus still constitutes the basis of the contemporary French legal system.⁴⁶ One of the more recent major reforms of the *Code civil* was the amendment of family law carried out in 2004 in an attempt to reflect current social changes.⁴⁷

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Reflecting a strong influence of Gaius' *Institutiones*,⁴⁸ the *Code civil* takes not contract, but ownership as the decisive legal concept in establishing the division of the Code. Dealing with personal law and property law in books one and two respectively, book three of the Code regulates the various forms in which property can be acquired. The first book also regulates nationality and family law, whilst the second is subdivided into property ownership, conveyancing and easement. The third book contains provisions relating to a number of areas including inheritance law, endowments, contract law and tort law. In the two hundred years of its existence, the broad nature of the topics covered by the *Code* has earned it both admiration as well as criticism.⁴⁹

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The Napoleonic Code represents one of the central and most significant influences on European civil law as a whole. Indeed, a general clause of tort liability based on article 1382 of the *Code civil* has been adopted in all continental European codifications with the exception of the German BGB. Romanian law (as enshrined in the *Codul civil* from 1865) still follows the French model extremely closely, as demonstrated by the current form of Romanian compensation law (*Responsabilité délictuelle*).

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The historical importance of the Napoleonic codes has been summed up as follows:

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Die cinq codes sollten als wichtigster Ausdruck und Garant der neuen Ordnung über ganz Europa verbreitet werden, teils durch Überzeugung, teils durch politische Pressionen, teils gewaltsam. Dies sollte auch der gesellschaftlichen und politischen Assimilation in dem neuen napoleonischen Staatensystem dienen. ... Man kann darin einen frühen Versuch europäischer Rechtsvereinheitlichung unter dem Vorzeichen politischer Hegemonie Frankreichs sehen.⁵⁰

The *Code civil* also provides a source which points to the innovative methods of the French policy of hegemony. After 1800, France discovered (and made use of) the functional significance of domestic policy for its foreign policy. The codifications thus became an instrument by which to maintain French rule and the medium of diffusion for the ideas of the French Revolution throughout Europe.⁵¹

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The reception and introduction of the *Code civil* in the early 19th century in territories conquered during the Napoleonic wars forced the newly subject peoples to engage with the five leading principles of the French Revolution: (1) freedom of the person; (2) equality before the law; (3) freedom of conscience and the separation of Church and State; (4) freedom of property; (5) the free movement of goods.⁵² Beyond this, the French Revolution had brought about a new social order of civic equality also reflected in the *cinq codes*. As a result, the contents and structure of the Napoleonic codification was characterized by the following aspects: the abrogation of feudal rights, the abolition of the aristocracy as a separate legal class and the nationalization of all Church property in 1789. This also involved fundamental change to the constitution and procedure of the legal courts, as the separation of State and Church and administration and judiciary created an independent legal system.⁵³ The discussion of the ideas transmitted by the *cinq codes* exceeded legal circles and they, and especially the *Code Napoléon*, were subject to widespread discussion in the German-speaking terri-

tories in a number of commentaries, handbook and pamphlets.

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The nature and scope of the impact of the revolutionary *Code civil* on a pre-revolutionary legal system and society is made clear by investigation of the situation presented in the Confederation of the Rhine. Following his conquest of the left bank of the Rhine,⁵⁴ Napoleon ordered the introduction of the *Code civil* as a means with which to homogenize the diverging range of social principles found in France and Germany. Seeking to effect not only social and political unity, its introduction was aimed at the assimilation of French and German society into a single unit of imperial rule. The introduction of a legal code dominated by civic, patrician values and aiming at the abolition of feudalism had a considerable impact on a society in which serfdom still existed. The political and legal reorganization thus forced was to effect a considerable change of the social situation in the German territories.⁵⁵ It soon became clear that a reform of the social and political order would have to proceed hand in glove with a reform of law, both private and public. Direct implementation of French law would have required the removal of a number of discrepancies between both the French and German systems of administration and justice⁵⁶ and the French constitutional settlement – which had established a representative system with a clear separation of the powers – and the current organisation of the German principalities.⁵⁷ The implementation of the revolutionary ideals enshrined in the *Code* served to reinforce the heated public debate occasioned by the reforms undertaken under the aegis of the Rhineland confederation. The impact of French rule, the introduction after 1798 of what was to become known as the Revolutionary Law (*droit intermédiaire*) and the reception of the *Code civil* (itself viewed as a codification of revolutionary legislation) resulted in a number of changes. In addition to agricultural reforms and the final abolition of serfdom, these changes included the abolition of aristocratic tax privileges and their preferential access to civil and military office.⁵⁸

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The only comprehensive adoption of the *Code Napoléon* occurred in the newly-founded model states of Berg and Westphalia. However, the absence of a sufficiently well-developed system of administration and jurisdiction meant that French law could not be implemented fully. Moreover, the incompatibility of the anti-feudal prescriptions of the *Code civil* with the German system of landholding and inheritance known as the *Meierwesen*⁵⁹ rendered unfeasible the full implementation of the French prescriptions.⁶⁰

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The experiences gathered in Westphalia and Berg convinced the German princes of the Confederation of the Rhine to introduce a modified form of the *Code civil* in the other states of the Confederation of the Rhine. The resulting controversy over the nature of this reform emerged from fears that the revolutionary nature of the code would be diluted by the conditions in the German states. This resulted in strong criticism of the compromises reached in the Grand Duchies of Baden (→ Media Link #as) and Frankfurt where the *Code civil* was amended by addenda that allowed the integration of elements of the existing feudal system.⁶¹

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A conference convened in Gießen by the rulers of Frankfurt, Darmstadt-Hessen and Nassau drew up a *Code* to be implemented in all states of the Confederation of the Rhine. One topic of discussion was the general feasibility of and practicalities involved in introducing the *Code Napoléon*. The participants were unsure whether the deficiencies of the German system of administration which would otherwise prevent adoption of the *Code Napoléon* should best be circumvented by modification or suspension of specific provisions in the Napoleonic codification. However, an increasing lack of interest on the part of the French and Napoleon's unwillingness to interfere in the internal affairs of the confederation meant that the consultations in Gießen were concluded without results.⁶²

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The negative experiences with the reception of the French legal compendium and the changing political situation made Bavaria abandon its plans (drawn up in the autumn of 1807) to draft a civil code based on the French model. It was replaced by a revised version of the 1756 code by Wiguläus von Kreittmayr (1705–1790) (→ Media Link #at).⁶³ Although the revolutionary *Code civil* was not integrated verbatim, it nevertheless numbers amongst the legal texts exercising a significant influence on the form taken by this revision.⁶⁴

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The collapse of the Napoleonic system in 1815 was followed by the reversal of the Napoleonic legal reforms in the German lands. This notwithstanding, the legal reforms implemented in the Confederation of the Rhine are regarded as equal in significance to the programme of reform implemented by Heinrich Friedrich Karl vom und zum Stein (1757–1831) (→ Media Link #au) and Karl August von Hardenberg (1750–1822) (→ Media Link #av) in Prussia. The reception of the *Code civil* convinced many who were later to become important proponents of the *Vormärz* movement of the necessity of abolishing not only the feudal system and the associated division of property inherent in manorialism, but implementing a comprehensive programme of emancipation from all forms of servitude. As a result, the reforms in the states of the Confederation of the Rhine favoured the development of the coalition of forces (including Reformism, Liberalism and Socialism) constituting the *Vormärz* reform movement and formed the basis for a reorganisation of state and society, thereby contributing to the Revolution of 1848.⁶⁵ The extent to which French law was received in the states of the Confederation of the Rhine is demonstrated by its longevity, remaining in force in the Rhineland well into the 19th century. A further long-term effect of its adoption was that this revolutionary law was imbued with a constitutional significance in the monarchical states of the *Deutsche Bund* (German Confederation), where the promulgation of a constitution had been promised but not realised.

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The Influence of the French and Spanish *Code civil* in the Former French Colonies (Québec) and South America (Mexico)

The experience of colonial rule (→ Media Link #ax) in the young states of Latin America generated an awareness of the extent to which political authority is guaranteed by the control of private law. This explains the speed with which the newly independent states set about producing a codification of their own civil law. The attractiveness of freedom and equality, two key tenets of the new French law, explains the choice of French and not Spanish law as a model in the development of private law and the move to replace the imposed Spanish legal settlement by creating an entirely new and comprehensive legal order.⁶⁶ Mexico, for instance, adopted not only the spirit of French law, but admiring the North American independence movement, drew on United States legislation in the promulgation of the first codification of civil law in 1871. This promulgation was preceded by the achievement of complete independence from Spain in 1821 and a phase of national consolidation between 1835 and 1846 in which period Mexico was established as a monarchy.⁶⁷ The attempt to codify civil law (which had begun in 1821) was favoured by Mexico's return to a republic in 1846; the preparations for the promulgation were complete only in 1870. The first substantial reform of this codification came in 1884 with amendments of inheritance law and marriage law. These developments remained under the central influence of French law.⁶⁸

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The first moves towards composing a set of civil statutes in Québec began in 1847 and concluded in 1866 with the *Code civil du Bas-Canada*.⁶⁹ Based as it was on a collection of multiple sources, (including British law, the *Coutumes de Paris* or the *Ordonnances* of the *Conseil souverain*) the state greatly required a programme of legal unification. Although France had been forced to cede Bas-Canada and its other North American possessions to Great Britain in 1763,⁷⁰ thus creating the British province of Québec, French influence remained prime in 18th century Québec, explaining the continuing reception of the principles of law practiced in both the *Ancien régime* and the French Revolution. Such an influence should not come as a surprise – not only French law and the *Code Napoléon* but French academic legal debate, jurisdiction and her codes of procedure (themselves widely viewed as progressive) remained dominant in not only Canada, but the majority of Europe.⁷¹ However, following political independence from France in 1763, Québec also began the slow process of emancipating herself from the legal system of her former Motherland. This had three reasons. Firstly, the *Code civil des Français* was based less strongly on the law of the *Ancien régime* than was Québec law. Secondly, the French jurists, schooled in application of the *Code Napoléon* were no longer forced to deal with the (by now obsolete) law of the *Ancien régime*.⁷² Thirdly, the increasing levels of non-French immigration required adaption of the current legislation to meet the needs of a changed situation.⁷³ Whilst the contractual law of the *droit québécois* was strongly influenced by the independent development taken by Canadian law, the *Code Napoléon* retained its position as the central model for the codification of civil law in Québec.⁷⁴ Furthermore, large sections of Québec's *Code civil* were based on both the French *Coutumes* and the writings of Pothier. This provides a good example of how the *Code civil* exercised a constitutive influence in the legal development of a country which today numbers amongst the mixed legal systems of the world.⁷⁵

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The Influence of the Romance Legal Family on Other Legal Families and Current Developments

As we have seen, the *Code Napoléon* often functioned as model on which other nations and states could establish their own legislative procedure. Its European significance was first appreciated following the statement (attributed to Napoleon): "Pourquoi mon Code Napoléon n'eût-il pas servi de base à un Code européen?"⁷⁶ The code of procedure, *organisation judiciaire* and French legal practice were also important for the further development of the Romance legal family.⁷⁷ Thus the Romanian *Code Callimaque* (issued in 1817) may well have followed the Austrian *Allgemeines bürgerliches Gesetzbuch* (ABGB) but the principles underpinning its interpretation and application were those of French jurisprudence. This led to an ever-increasing level of influence of French law in the Romanian legal sphere; the revision of the Romanian civil statutes from 1864 was heavily influenced by the *Code civil*.⁷⁸ The primacy of French legal practice had survived the collapse of the Napoleonic ascendancy.⁷⁹

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However, the growth of nationalism after 1815 and the rise of a tendency in France to issue special laws led to the individual legal orders growing apart. The increasing importance of the individual forms of national jurisprudence was exacerbated by a growing realization that the *Code Napoléon* contained a number of loopholes. Although the practice of *causist* developed by the French courts to address this problem succeeded in closing a number of these gaps, the realization of this fact impeded the adoption by other states of French law and its appendant jurisprudence. Nevertheless, French law remained in force in those states which understood its individual tenets as an expression of civic basic rights.⁸⁰ The influence of the *cing codes* on European legal development thus stands in stark contrast to the nationalization of law witnessed during the 19th century.⁸¹

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Today, the consensus is that French law has developed into judicial law, a fact which renders its adoption impossible.⁸² This situation proves to be of especial difficulty for the current programme of legal harmonization pursued by the European Union. Indeed, the celebrations to mark the 200th anniversary of the promulgation of the *Code civil* were accompanied by a discussion as to whether it should not be replaced by a pan-European codification of private law.⁸³ This is compounded by the fact that the *Code civil* is established on the principle of property ownership and not contract law. This considerable and systematic difference requires it to compete even more both with the strong common law and other legal orders which (together with the *Code civil*) make up the civil law system.⁸⁴

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Appendix

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Notes

1. ^ Scholler, Vorwort 2001, p. 7; Dölemeyer, Legal Families 2010.
2. ^ For the case of Romania, cf.: Ranieri, Projet du Code Civil 1976; Halpérin, Code Civil 2003, p. 135.
3. ^ Berger, Deutscher Rechtskreis 2010.
4. ^ A short overview outlining the dependence on the *Code civil* of a number of South American codifications of civil law is provided in: Röthlisberger, Traditionsprinzip 1982, pp. 36f., and Halpérin, Code Civil 2003, pp. 135f. For the example of Chile, cf.: Borja Pérez, Influencia 1934; Cevallos Arízaga, Historia del derecho 1963–1969; Fernández Salvador, El primer proyecto del código civil ecuatoriano 1919; Keeding, Provinz Quito 1983.
5. ^ Dadomo / Farran, The French Legal System 1996, pp. 1–5.
6. ^ Gergen, Art. "Französisches Recht" 2008, col. 1700.
7. ^ Dadomo / Farran, The French Legal System 1996, p. 7 with footnote 24.
8. ^ Glissen, Introduction historique au droit 1979, p. 334.
9. ^ The principle of consensualism means that a contract is convend through the consensus of wills i.e. the agreement of all contracting parties.
10. ^ Gergen, Art. "Französisches Recht" 2008, col. 1701–1702. Adult-based liability means that the person having caused the damage is only liable if s/he acts both illeglly and culpably (i.e. intentionally or negligently).
11. ^ For the period 1500–1700 see Ourliac / Gazzaniga, Histoire du droit privé français 1985, pp. 145–168.
12. ^ Glissen, Introduction historique au droit 1979, pp. 346f.; Olechowski, Rechtsgeschichte 2003, p. 24; Fikentscher, Methoden 1975, p. 408; Gergen, Art. "Französisches Recht" 2008, col. 1702; Bergfeld, Art. "Robert-Joseph Pothier" 2001.
13. ^ Fikentscher, Methoden 1975, p. 430; Holthöfer, Art. "Jean Domat" 2001. Regarding the Corpus Juris Civilis, see: Lydorf, Accursius 2011, pp. 36f. The Corpus Juris Civilis is a multiple volume collection of statutes, the compilation of which was ordered by the East Roman Emperor Justinian (482–565) and which was promulgated in 529/529.
14. ^ Constitution de 1791, titre premier, article 3, in: Godechot, Les Constitutions 2006 ("A code of civil law is to be compiled for the whole kingdom.", transl. by A.S.); Gergen, Art. "Französisches Recht" 2008, col. 1703.
15. ^ For the individual projects see Bouineau, Première Partie 2004, p. 39; Jacoby, Allgemeine Rechtsgrundsätze 1997, pp. 76ff. For the "Responsabilité du fait personelle": Deroussin, Histoire du droit des obligations 2007, pp. 731ff.
16. ^ Montazel, Art. "Jean-Jacques-Régis de Cambacérès" 2001; Motte, Art. "Jean-Etienne-Marie Portalis" 2001; idem, Art. "Jacques de Maleville" 2001.
17. ^ Hattenhauer, Europäische Rechtsgeschichte 2004, margin number 1584.
18. ^ Gergen, Art. "Französisches Recht" 2008, col. 1703f.
19. ^ Klein, Unwirksamkeit 2010, pp. 114ff.; Halpérin, Code Civil 2003, p. 100.
20. ^ Heirbaut, L'émancipation 2005; Godding, De l'"ancien droit Belgique" 2005.

21. ^ Pozo Carrascosa, La introducción 1992, pp. 189ff.; Gergen, Le Code civil 2006.
22. ^ Hattenhauer, Europäische Rechtsgeschichte 2004, margin number 1590.
23. ^ For details cf. Ranieri, L'influence 2006, pp. 56f.
24. ^ idem, Europäisches Obligationenrecht 2009, p. 16.
25. ^ idem, 200 Jahre Code Civil 2005, pp. 89f. On Italian legal history in general: idem, Kodifikation: Teil 1 1982, and idem, Kodifikation: Teil 2 1982; Cavana, L'influence 1994.
26. ^ Halpérin, Code Civil 2003, p. 135.
27. ^ Ranieri, Europäisches Obligationenrecht 2009, p. 16.
28. ^ Fikentscher, Methoden 1975, p. 577.
29. ^ Bouineau, Première Partie 2004, p. 79.
30. ^ ibidem.
31. ^ The conflict of laws states which prescription is applicable when a number of colliding legal propositions meet.
32. ^ Fikentscher, Methoden 1975, p. 580.
33. ^ Bouineau, Première Partie 2004, p. 79.
34. ^ Cramer, Les cinq codes 1850.
35. ^ Dölemeyer, Napoleon als Gesetzgeber 2010, p. 26.
36. ^ ibidem, Gergen, Der Einfluss des Code d'instruction criminelle 2010; Brandt, Die Entstehung des Code penal 2002.
37. ^ For the influence of civic rights on the *Code d'instruction criminelle* cf. Gergen, Der Einfluss des Code d'instruction criminelle 2010, pp. 42f. and pp. 46ff.
38. ^ Dölemeyer, Napoleon als Gesetzgeber 2010, pp. 29–35.
39. ^ A detailed account is provided in Theewen, Napoléons Anteil 1991.
40. ^ Bouineau, Première Partie 2004, pp. 47ff.
41. ^ A description of the procedure is provided in Marty / Raynaud, Droit civil 1972, p. 128.
42. ^ Hattenhauer, Europäische Rechtsgeschichte 2004, margin numbers 1586ff.
43. ^ Glissen, Introduction historique au droit 1979, pp. 411–413.
44. ^ Senn, Rechtsgeschichte 2009, p. 234.
45. ^ Dadomo / Farran, The French Legal System 1996, p. 11.
46. ^ Tallon, Grandeur et décadence 2003, p. 281.
47. ^ Roux, Deuxième Partie 2004, pp. 161–197. For a more detailed account, see Bihl, Le code civil français 2000. A chronological overview of all the reforms to the *Code civil* since 1804 is provided on pp. 589ff.
48. ^ The institutions of Gaius is a legal textbook dated to the mid second century AD. The *Corpus Juris Civilis* is based to a large extent on Gaius.
49. ^ Bouineau, Première Partie 2004, p. 54; Bürge, Zweihundert Jahre 2004; idem, Das französische Privatrecht 1991.
50. ^ Dölemeyer, Napoleon als Gesetzgeber 2010, p. 35, "As both the most important expression of the new order and the prime guarantor of upholding it, the *cinq codes* were to be disseminated throughout Europe, partly by argument, partly by political pressure and partly by violence. The codes were also to effect the social and political assimilation of the new Napoleonic state system. ... This can be interpreted as an early attempt at European legal harmonization in the framework of French political hegemony." (transl. by A.S.).
51. ^ Fehrenbach, Kampf um die Einführung 1973, p. 10; for further details, see idem, Traditionelle Gesellschaft 1974.
52. ^ ibidem, p. 50.
53. ^ Gergen, Der Einfluss des Code d'instruction criminelle 2010, pp. 40, 43, 52; Stein, Die Bedeutung des Code civil 2005, pp. 2ff.
54. ^ For the authority of French law in the territories on the left bank of the Rhine since 1795, cf. Gergen, Art. "Französisches Recht" 2008, col. 1703ff.; idem, Der Einfluss des Code d'instruction criminelle 2010, pp. 40–59; with greater detail, Schubert, Französisches Recht 1977.
55. ^ Fehrenbach, Kampf um die Einführung 1973, p. 18.
56. ^ Dölemeyer, Ministère publique und Staatsanwaltschaft 2005; Gergen, Der Einfluss des Code d'instruction criminelle 2010, pp. 44f.
57. ^ Dölemeyer, Napoleons Gesetzbuch 2001.
58. ^ For further detail, see Halpérin, Histoire des droits en Europe 2004.
59. ^ A *Meier* was a free peasant subject to a specific body of "Meier law" (*Meierrecht*), who leased a plot of land and property and was responsible for its upkeep. Farms that were attached to this plot of land were administered by the Meier for his master. The *Deutsche Rechtswörterbuch* (German Legal dictionary) defined *Meierrecht* (Meier Law) as "the totality of legal provisions to which a limited or hereditary right of use of a Meier estate is granted as well as the specific right of use in return for which the holder is not only to prove the careful

administration of the lands, but to perform a range of additional services", (<http://drw-www.adw.uni-heidelberg.de/drw/> [07/05/2012]).

60. ^ Fehrenbach, Kampf um die Einführung 1973, p. 34.
61. ^ ibidem, p. 41.
62. ^ ibidem, p. 45.
63. ^ Dölemeyer, "Nie alterndes Modell" 1991.
64. ^ Fehrenbach, Kampf um die Einführung 1973, pp. 48–51.
65. ^ ibidem, pp. 52f.
66. ^ Mirow, Private Law 2003, pp. 124f.
67. ^ For details, cf. Rojina Villegas, Derecho civil mexicano 1977.
68. ^ Bouineau, Première Partie 2004, pp. 83f.
69. ^ For the development between ca. 1774 and 1840 see Morin, La perception 1993, pp. 1–7; for the details of the development of the codification and the legislative process see ibidem, pp. 23ff. and pp. 31ff.
70. ^ The Canadian confederation was formed in 1867 and the first constitution established Le Haut and Le Bas-Canada as the provinces of Ontario and Quebec respectively, ibidem, p. 7.
71. ^ Ranieri, 200 Jahre Code Civil 2005, p. 91.
72. ^ For the important role of *Ancien droit* see: Morin, La perception 1993, pp.13ff.
73. ^ Deslauriers, Droit Québécois 1993, pp. 314f. For further details on the *Code Civil du Bas-Canada* see: Normand, La Codification 1993, pp. 43ff.
74. ^ Deslauriers, Droit Québécois 1993, pp. 316f. Examples for the quantitative acceptance by the law of Obligations of provisions from the *Code civil*, see: ibidem, pp. 318f.
75. ^ Roux, Deuxième Partie 2004, p. 93. Pineau, Codes et histoire 2005, pp. 229–232, pp. 236–244.
76. ^ "Why could my Code Napoléon not have served as the foundation for a European Code of Laws?" (transl. by A.S.). Las Cases, Mémorial de Ste. Hélène 1827, vol. 3, p. 298, vol. 4, p. 152, 297.
77. ^ Halpérin, Le code de procedure 2006, pp. 23ff.
78. ^ Ranieri, 200 Jahre Code Civil 2005, pp. 103f.
79. ^ Dölemeyer, C'est toujours 2006.
80. ^ The five French *codes* were translated and published in 1814 together with all the laws, decretals and legal opinions of the State Council etc. which abrogated, altered or supplemented the French codifications. See: Dölemeyer, C'est toujours 2006, p. 28; idem, Napoleon als Gesetzgeber 2010, p. 39; idem, "Wohin Napoleons Gesetzbuch kommt" 2001, pp. 1056–1107. A description of how French criminal law was retained is provided in: Gergen, Der Einfluss des Code d'instruction criminelle 2010, pp. 40ff.
81. ^ Dölemeyer, Napoleon als Gesetzgeber 2010, pp. 37f.
82. ^ idem, Ministère public und Staatsanwaltschaft 2005, pp. 93–103.
83. ^ See Ancel, Der französische Code civil 2005; Roux, Deuxième Partie 2004, pp. 200–204; Wijffels, Le code civil 2005; Lequette, Le code civil 2004.
84. ^ Tallon, Grandeur et décadence 2003, pp. 292f.; for further detail: Cour de Cassation, Les Français et leur Code civil 2004; Lequette, Le code civil 2004; Wijffels, Le code civil 2005; Halpérin, Art. "Code Civil" 2008.

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Link #ab



- [http://gallica.bnf.fr/ark:/12148/bpt6k1061517.image.r=Code+Civil+des+Francais.f2.langENIn-formationen%20von%20Gallica:%20Title%20:%20Code%20civil%20des%20fran%C3%A7ais%20:%20%C3%A9d.%20originale%20et%20seule%20officielle,%20Publisher%20:%20Imp.%20de%20la%20R%C3%A9publique%20\(Paris\),%20Date%20of%20publication%20:%201804%22%20class=%22image-inline%22%20src=\)](http://gallica.bnf.fr/ark:/12148/bpt6k1061517.image.r=Code+Civil+des+Francais.f2.langENIn-formationen%20von%20Gallica:%20Title%20:%20Code%20civil%20des%20fran%C3%A7ais%20:%20%C3%A9d.%20originale%20et%20seule%20officielle,%20Publisher%20:%20Imp.%20de%20la%20R%C3%A9publique%20(Paris),%20Date%20of%20publication%20:%201804%22%20class=%22image-inline%22%20src=))
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Link #ac

- Deutscher Rechtskreis (<http://www.ieg-ego.eu/de/threads/crossroads/rechtsraeume-rechtskreise/elisabeth-berger-deutscher-rechtskreis>)

Link #ad

- South America [↗](http://d-nb.info/gnd/4074032-8) (http://d-nb.info/gnd/4074032-8)

Link #ae

- Charles VII of France (1403–1461) VIAF [↗](http://viaf.org/viaf/2615559) (http://viaf.org/viaf/2615559) DNB [↗](http://d-nb.info/gnd/100736416) (http://d-nb.info/gnd/100736416) ADB/NDB [↗](http://www.deutsche-biographie.de/pnd100736416.html) (http://www.deutsche-biographie.de/pnd100736416.html)

Link #af

- Louis XIV of France (1638–1715) VIAF [↗](http://viaf.org/viaf/89765843) (http://viaf.org/viaf/89765843) DNB [↗](http://d-nb.info/gnd/118816829) (http://d-nb.info/gnd/118816829) ADB/NDB [↗](http://www.deutsche-biographie.de/pnd118816829.html) (http://www.deutsche-biographie.de/pnd118816829.html)

Link #ah

- Robert-Joseph Pothier (1699–1772) VIAF [↗](http://viaf.org/viaf/61653679) (http://viaf.org/viaf/61653679) DNB [↗](http://d-nb.info/gnd/118793020) (http://d-nb.info/gnd/118793020)



- <http://www.ieg-ego.eu/en/mediainfo/robert-joseph-pothier-169920131772?mediainfo=1&width=900&height=500>
Robert-Joseph Pothier (1699–1772)

Link #ai



- [http://gallica.bnf.fr/ark:/12148/bpt6k24196g/f1?Informationen%20von%20Gallica:%20Titel%20:Oeuvres%20de%20Pothier.%20Tome%20premier%20/%20.%20Nouvelle%20%C3%A9dition...%20publi%C3%A9e%20par%20M.%20Siffrein...,%20Date%20of%20publication:%201821-1824%22%20class=%22image-inline%22%20src=\)](http://gallica.bnf.fr/ark:/12148/bpt6k24196g/f1?Informationen%20von%20Gallica:%20Titel%20:Oeuvres%20de%20Pothier.%20Tome%20premier%20/%20.%20Nouvelle%20%C3%A9dition...%20publi%C3%A9e%20par%20M.%20Siffrein...,%20Date%20of%20publication:%201821-1824%22%20class=%22image-inline%22%20src=))
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Link #aj

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- <http://www.ieg-ego.eu/en/mediainfo/jean-domat-162520131696?mediainfo=1&width=900&height=500>
Jean Domat (1625–1696)

Link #ak







- <http://gallica.bnf.fr/ark:/12148/bpt6k55297429/f5?Informationen%20von%20Gal->

lica:%20Title:%20Les%20loix%20civiles%20dans%20leur%20ordre%20naturel.%20Tome%201%20/%20.%20Seconde%20C3%A9dition,%20Publisher%20:%20P.%20Aubouin,%20P.%20Emery%20et%20C.%20Clouzier%20(Paris),%20Date%20of%20publication:%201697.%22%20class=%22image-inline%22%20src=) mce_src= 

Link #al

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Link #an

- Revolutionary and Napoleonic Wars (<http://www.ieg-ego.eu/en/threads/alliances-and-wars/war-as-an-agent-of-transfer/frederick-c-schneid-the-french-revolutionary-and-napoleonic-wars>)

Link #ap

- Rafael del Riego (1784–1823) VIAF   (<http://viaf.org/viaf/19805989>) DNB  (<http://d-nb.info/gnd/119409836>)

Link #aq

- Französische Revolution als Medienereignis (<http://www.ieg-ego.eu/de/threads/europaeische-medien/europaeische-medienereignisse/rolf-reichardt-die-franzoesische-revolution-als-europaeisches-medienereignis-1789-1799>)

Link #ar







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Napoleon Bonaparte (1769–1821)




Link #as

- Grand Duchies of Baden  (<http://d-nb.info/gnd/4069065-9>)





Link #at

- Wiguläus von Kreittmayr (1705–1790) VIAF   (<http://viaf.org/viaf/5722900>) DNB  (<http://d-nb.info/gnd/118566520>) ADB/NDB  (<http://www.deutsche-biographie.de/pnd118566520.html>)

Link #au

- Heinrich Friedrich Karl vom und zum Stein (1757–1831) VIAF   (<http://viaf.org/viaf/18256525>) DNB  (<http://d-nb.info/gnd/127792325>)

Link #av

- Karl August von Hardenberg (1750–1822) VIAF   (<http://viaf.org/viaf/4975077>) DNB  (<http://d-nb.info/gnd/118545906>) ADB/NDB  (<http://www.deutsche-biographie.de/pnd118545906.html>)

Link #ax

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