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The Civil Law Tradition

Antecedents
- Law in ancient Greece
- Roman law
  - Development of Roman empire
  - Twelve Tablets
  - Institutionalization of law

Institutionalization
- Rationalization of content
  - Create boundaries between what is and is not law
  - Create categories to allow for internal differentiation
  - Allow for increasing complexity
- Rationalization of process of change
- Enhance predictability
- Facilitate continuity
Roman Law: Classical Period

- Classical period: 100 BCE to 250 CE
- Focus on elaboration and classification of law
  - Treatises
  - Focus on cases
- Development of categories
  - Persons
  - Things
  - Actions

The Justinian Code

- Decline of Roman Empire
- Emperor Justinian
- Justinian Code (*Corpus Juris Civilis*)
  - Digest
  - Code
  - Institutes (student manual)
  - Novels (supplemental compilations)
- Received little attention when published

Rediscovery of Justinian Code

- Justinian Code largely unnoticed, from 600-1050
  - Roman law still extant, but references were to "barbarian" codes
  - Roman law still applied to Gallo-Roman peoples under rule of Germanic conquerers
  - "Personal principle" vs. "territorial principle"
- Justinian Code rediscovered in late 11th Century
  - Italian universities started faculties of law
  - Digests in particular came into some prominence
Increased Prominence of Roman Law
- Through late middle ages, law became an autonomous subject of study in universities
  - Roman law texts were main sources
  - Competed with Common Law in England for dominance
  - Scholars sought to reconcile Roman law principles and canon law principles

Customary Law and Roman Law
- 13th Century attempts to codify local customary law
  - Roman law provided organizing categories and principles
  - Included attempts to codify English common and local law
- Attempts continued into the 15th century and beyond

Reception of Roman Law
- Development of nation states
  - Second half of 16th Century (1550-1600)
  - Codification of local law was insufficient
  - Need for law that could be applied nationally
- No other country had developed anything equivalent to English Common Law
- Roman Law was a ready-made solution
Civil Law in England

- Dominance of Roman/Civil Law on Continent
- Problem of Admiralty and international trade
- Started as Common Law but moved toward Civil/Roman Law
- Admiralty Courts as Civil/Roman Law Courts
- Doctors’ Commons and Universities

Jus commune

- Justinian Code as basis of a “common law of Europe”
  - “Common” not in the sense of judge-made
- Latin served as a common language of scholars
- Holy Roman Empire and local customs
- Adopted by some local rulers
- Role declined with rise of nation-states

Codification Movement

- 18th Century Enlightenment Movement
- Political context
- Economic context
- Goals of codification
  - Commit to writing existing law in clear and systematic order
  - Replace outmoded rules with modern law suited to contemporary needs
- Earliest codification efforts in Prussia and Austria (mid 1750s)
Codification in France

- Initial efforts in wake of French Revolution
- Rejection of drafts by constituent assembly in 1790s
- Napoleon seized power in 1799
  - Four man commission appointed to draft code
  - Drew heavily on work of French magistrate who had sought to codify functioning customary and Roman Law

French Civil Code

- Napoleonic Code/Code Napoleon
  - Published in 1804
  - Elegantly written in style accessible to the ordinary citizen
  - Three “books”
    - Persons
    - Things
    - Ownership and Modification of Ownership

German Civil Code

- Highly detailed Prussian Civil Code promulgated in 1794
- German legal science
  - Through much of 19th century
  - Pandectist School
- German unification under Bismarck (1871)
  - Need for a common German Civil Code
  - Bürgerliches Gesetzbuch (BGB) completed in 1896 and promulgated in 1900
**Bürgerliches Gesetzbuch**

- General Part
  - Rules common to all legal transactions
  - Legal capacity of persons
- Obligations
- Things
- Family law
- Succession

**Exporting Codes**

- French Code
  - Belgium
  - Netherlands
  - Spain
  - Latin America
  - French Africa
  - Southeast Asia
  - Oceania
  - French Caribbean
- Germany
  - Central Europe
  - Eastern Europe
  - Italy
  - Greece
  - Japan
  - Portugal
  - Brazil

**Categories of Law in the Civil System**

- Public Law
- Private Law
Public Law
- Historically the preserve of the sovereign
- Administrative law
- Traditional courts stayed out
- Separate courts in some countries
  - Conseil d'État (Council of State)
- Typically uncodified except for penal (criminal) law and areas such as tax law

Private Law
- Civil law
  - Law of persons
  - Family law
  - Marital property law
  - Property law
  - Succession law
  - Law of obligations
- Commercial law
  - Law merchant/“Lex Mercatoria”
- Labor law

Sources of Law
- Primary sources
  - Enacted law
  - Customary law
- Secondary sources or “authorities”
  - Case law
  - Writings of legal scholars
  - Assist jurists in interpretation but do not bind jurists
  - Helps increase consistency (treat like cases alike)
Distinguishing Features of Civil Law

- Focus on codes
  - Supremacy of legislature
  - Codes exist in Common Law
  - Some civil law countries lack code
- Working from general principles rather than specific situations
- Emphasis on certainty in law
  - More important than equity
- Judge as civil servant
  - Legal decision making as technical
  - Common law judge as "wise men"