Political Science
Legal Studies 217

Legal Reasoning:
Civil Law Style

Sources of Civil Law
- Sources vs. Authorities
- Sources
  - Legislative acts
  - Constitutions
  - Custom
- Authorities
  - Cases
  - Scholarly commentary

Form of Civil Law
- General Principles vs. Detailed Rules
  - French Civil Code
  - Prussian Civil Code
- "Literary" vs. Technical
  - French Civil Code
  - German Civil Code
French Approach

- Accessibility
- Elegance
  - Coherent
  - Comprehensive
- Simplicity and stability

Delict

- Art. 1382: Any act of man, which causes damages to another, obliges the person at fault to repair it.
- Art. 1383: Every person is liable for the damage which they cause not only by their own acts, but also by their negligence or lack of prudence.
- Art. 1384: One is liable not only for the damages that one causes by our own acts, but also for those caused by the acts of persons for whom one is responsible, or the things under our care.
- Art. 1385: The owner of an animal, or the one who uses it, while he is using it, is responsible for the injury caused by the animal, whether it is under his care, or has been lost or has escaped.
- Art. 1386: The owner of a building is responsible for the damage caused by its ruin, if this has occurred as a consequence of the failure to keep it in repair or of a defect in its construction.

German Approach

- Organization and language much more technical
- Provisions more detailed
- Designed for the technician rather than the layperson
- Delict
  - 20 articles rather than just 5
**Delict, German Style**

§ 823. [Duty to compensate for damage]

(1) A person who, willfully or negligently, unlawfully injures the life, body, health, freedom, property or other right of another is bound to compensate him for any damage arising therefrom.

(2) The same obligation is placed upon a person who infringes a statute intended for the protection of others. If, according to the provisions of the statute, an infringement of this is possible even without fault, the duty to make compensation arises only in the event of fault.

§ 825. [Inducement to cohabit] A person who by cunning, by threats, or by the abuse of a relationship of dependence, induces a woman to permit extra-marital cohabitation, is bound to compensate her for any damage arising therefrom.

§ 828. [Minors: deaf mutes]

(1) A person who has not completed his seventh year of age is not responsible for any damage which he causes to another.

(2) A person who has completed his seventh but not his eighteenth year of age is not responsible for any damage which he causes to another, if he, at the time of committing the damaging act, did not have the understanding necessary for realizing his responsibility. The same applies to a deaf mute.

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**Situations Requiring Legal Interpretation**

- Ascertaining the meaning of text
- Ascertaining the law when a legal provision is ambiguous or there are inconsistencies
- Ascertaining the law when there is a gap in the legislative text
- Ascertaining the law when the law is completely silent on a matter within its scope or when an old law has become completely unsuitable to current circumstances

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**Applying the Code Provisions for Delict**

- What is negligence?
- What constitutes causation?
- What constitutes cunning?

“A person who by cunning, by threats, or by the abuse of a relationship of dependence, induces a woman to permit extra-marital cohabitation, is bound to compensate her for any damage arising therefrom.”

- How do you apply the code provisions to the modern automobile accident?
Role of “Authorities”

- Development of accepted interpretations over time
  - Treatises
  - Cassation
    - Casser = Quash
  - Revision
- Role of legal education
  - Emphasis on learning code and memorizing the “correct” interpretations and applications of its provisions
- Role of bureaucratic judiciary

Legal Reasoning

- Legal science and deduction
- Stability of the law
- Treating like cases alike
  - Establishing and communicating principles through authorities
- Analogic reasoning as means of legal interpretation
- Judicial interpretation in the context of an ideology of legislative supremacy

Differences with Common Law

- Ideology that there IS a “correct” interpretation
- Prior cases are important but only as guiding “authorities” not as binding precedent
  - No horizontal precedent
- Decisions of superior courts constitute particularly strong authority
Legal Argument

- Heavy reliance on “authority”
  - Prior cases
  - Treatises
  - Reliance on authority has increased over time
  - Convergence between common law and civil law style of argument
    - Why?

Style of Decisions

- Emphasis on broad principles
- Deductive in style vis-à-vis implications of the broad principles
- Absence of citations to cases
- More emphasis on evolution of law as a vehicle for discerning intent
- Express greater deference to legislative bodies

German abortion decision

- Struck down law allowing abortion
- “Everyone has a right to life”
  - “Everyone” within the meaning of Article 2.2 first sentence of the Basic Law is “every living human being”; or, put differently, every human individual possessing life; “everyone” thus also includes the still unborn human being.
- Contrast to 14th Amendment
  - “All persons born or naturalized in the United States, ... nor shall any state deprive any person of life, liberty, or property, ...”
Duty of the State

- "The duty of the state to protect every human life can therefore be derived directly from Article 2.2. first sentence of the Basic Law. [This duty] also arises from Article 1.1. second sentence of the Basic Law; for the developing human life is included in the protection of human dignity which is granted by Article 1.1. of the Basic Law. Where human life exists it merits human dignity; it is not decisive whether the holder of this human dignity knows of it and is able to maintain it by himself. The potential capabilities lying in human existence from its inception on are sufficient to justify human dignity.

Statement of Authoritative Principle

- When using Article 1.1. of the Basic Law as a standard, the decision must favor the protection of the fetus' life over the right of self-determination of the women. [The women] may be limited in some potential personal developments by pregnancy, birth, and childrearing [and her right to self-determination may thus be impaired]. The unborn life, however, gets destroyed by the termination of a pregnancy. Pursuant to the principle of the most careful balancing of competing constitutionally protected positions, and considering the fundamental concept behind Article 19.2. of the Basic Law, the protection of the nascentus's life must be granted priority. This priority principally lasts for the entire duration of the pregnancy...

Deduction

- From [the discussion] above the constitutionally required fundamental position of the legal order with respect to termination of pregnancies may be deduced...
- The legal order must clearly articulate its disapproval of the termination of pregnancies.
Obligations of the State

- Law as top down rather than bottom up ("duty of the state")
- Common law system as focused limiting the state while ordering private relations
- Civil law system as focused on as empowering the state and specifying the state's role in ordering private relations
  - "how the state is to fulfill its obligation of an effective protection of life ..."

Style vs. Substance?

- Ideology of legal reasoning vs. practice of legal reasoning
- Definitive style of statement of the law
  - We can know in a positive sense what the law IS
- Convergence of civil law and common law