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Del lavoro. Numerous rules were adopted in the field of individual labour law in the 1970s and 1980s. Taking these into consideration, the codified rules on employment contracts today can partly be seen as obsolete. Finally, the fundamental reform of → company law in 2002 has to be mentioned.

Since the end of the 1980s, further substantial legislative interventions took place due to the European → directives on consumer protection law (→ consumers and consumer protection law). It began with the decree of 24 May 1988, No 224 on the implementation of the → product liability Directive. At that time, the Italian legislature opted for the path of specific legislation outside the codification. Almost all of the directives were implemented by means of specific acts. Directive 93/13 on unfair terms and Directive 99/44 on the sale of consumer goods and associated guarantees were, however, included in the code by adding new articles into the structure of the old text. Yet, in the meantime, the Italian legislature has dismissed this strategy. All new consumer law provisions included into the *Codice civile* have recently been recompiled in a separate codification of consumer protection law. The *Codice del consumo* was adopted by legal decree No 206 in 2005 and since then has complemented the civil code.

Even though interventions to the text of the 1942 code in the field of contract law have been less numerous, they have been no less significant. In this context, one should mention an essential reform in the field of → suretyship in 1992, when the Italian legislature amended and supplemented Art 1938 following foreign examples.

4. Key principles of the code

Despite the major influence of German legal literature on contemporary Italian scholarship, Italy's traditional loyalty to French law can easily be traced in the new code of 1942. As mentioned above, the Italian legislator opted against a → general part. The term *negozio giuridico* (*Rechtsgeschäft*, → juridical act), which is subject to a vast amount of Italian literature, is not included in the code's vocabulary. Only the contract and its formation (→ contract (formation)) are regulated (Arts 1321 ff). The doctrine of declaration of intention, in contrast, has not been codified. Following the example of Swiss law (Art 7 → Swiss Code of Obligations (OR)) provisions concerning contracts are declared as also being applicable to unilateral declarations of intention (Arts 1334, 1324). The proximity to the French example is obvious in Art 1325 concerning the *requisiti del contratto* (contract requirements), in which *causa del contratto* and *oggetto del contratto* mark the historical connection to Art 1108 → *Code civil*. Article 1328 according to which an offer is revocable until the conclusion of the → contract can be cited as another example. A revocation at an inappropriate time, however, creates an obligation to compensate the negative interest.

Totally new at that time were the codification of the doctrine of liability due to *culpa in contrahendo* (Arts 1337–1338) and two provisions (Arts 1341–1342) concerning the conclusion of contracts using → standard contract terms and standard form contracts. However, the codification limits itself to a formal control of the inclusion of the standard contract terms into the contract and ignores the problem of controlling their content. Later consumer law legislation regarding unfair terms in consumer contracts has in this respect considerably overtaken the 1942 code.

The rules on non-performance occupy an intermediate position between the French and the German legal traditions. While even the code of 1865 had not been a verbatim copy of the French provisions, a totally new conceptualization entered Italian law at the end of the 19th century, as a result of the systematic adoption of contemporary German legal thought. An essay by Giuseppe Osti (1885–1963), published in 1918, was of considerable relevance. It introduced the pandectist doctrine of impossibility, as embedded in the German BGB, into Italian law. His concept of contractual liability, subsequently adopted by the Italian courts, considerably shaped the 1942 Italian civil code. As previously mentioned, Giuseppe Osti participated in the work on the draft.

Also, in the field of the law of delict, the Italian legislature of 1942 did not strictly follow the example set by the German BGB. In this case, the → Swiss Code of Obligations (OR) (Art 41 OR) seems to have been the leading model. The wording of Art 2043, the general provision of delictual liability, resembles Art 1382 → *Code civil*. However, while its predecessor, Art 1151 in the code of 1865, had still been a verbatim translation of the French provision the following essential addition was made to Art 2043 *Codice civile* in 1942: Damage has to be *ingiusto*. In this way, reference was made for the first time to the unlawfulness of the damage in Italian liability law. Up until a few decades ago, Italian literature and jurisprudence considered this element—following the example of § 823(1) BGB—as constituting a legal recognition of a *numerus clausus* of absolute rights protected by the law of delict. Only three decades ago did Italian jurisprudence finally abandon this restrictive interpretation. Today, therefore, it even recognizes the recoverability of pure economic loss to an extent which may cause concern. Exactly like the German BGB and the tradition of German → *Pandektensystem*, the 1942 code considerably limits the recoverability of immaterial loss (Art 2059). Under pressure exerted by the jurisprudence of the lower courts and also under the auspices of an interpretation of the law of delict (→ law of torts/delict) guided by the constitution, the Italian Supreme Court in private law matters has, however, substantially loosened these strict requirements in recent years. Purely immaterial damages are nowadays recognized to a large extent within the scope of the so-called *danno biologico* and the *danno esistenziale*. Following the examples of Art 58 of the Swiss civil code and Art 1384 of the French → *Code civil*, the 1942 code includes further general clauses which impose strict liability for risks emanating from objects (Art 2050) and for dangerous acts (Art 2051).

The close connection between the Italian civil code and the French → *Code civil* is moreover confirmed by the provisions on transfer of ownership (→ transfer of title) which are based on the consensual principle. This was already true as regards the old code of 1865 (Art 710 and Art 1125). The legislator has, in this respect, intentionally decided to keep the traditional solutions concerning the *contratto con effetti reali* (Art 922 and Art 1376). The same can be said for the transfer of real estate property. Also in this regard, the legislature opted in favour of retaining the French system of *trascrizione* (Arts 2643–2681).

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Filippo Ranieri

Codification

1. Notion

The term codification can be used in different ways. Literally, it refers to the production of a 'codex', which in the ancient world was a set of wooden tablets covered with material used for writing and bound together in book form. In the late Roman Empire, collections of imperial constitutions were designated 'codices', the most famous example being the *Codex Justinianus*, the third part of the → *Corpus Juris Civilis*.

Today the term codification is generally used in the modern technical sense of the word that was coined by Jeremy Bentham. It denominates the legislative technique of stating an entire field of law in a clear, systematic and comprehensive manner. Collections of legal texts such as the *Codex Hammurabi* or the *Corpus Juris Civilis*, which do not even attempt to present the law as a systematic entity, do not therefore fulfil the requisites of a code in the technical sense, even though in scholarly writing they are often designated as such. State legislatures also often give in to the temptation to label as 'codes' statutes that are neither comprehensive nor systematic.

Traditionally, the term codification only refers to law enacted by the state. Soft law instruments such as the → Principles of European Contract

Law (PECL) or the → UNIDROIT-Principles of International Commercial Contracts (PICC), even though they fulfil the structural criteria of a real codification, can only be designated as 'private' or 'non-legislative codifications'.

2. Origins and aims of the idea of codification

The idea of codification is a result of various historical and intellectual factors. One of them was the criticism first raised against the → *ius commune* by the humanist lawyers (→ humanism) in the 16th century. They emphasized the historical relativity of the *Corpus Juris Civilis* and pointed out its lack of clarity and cohesion. The complexity of legal sources further added to the obscurity and to the many contradictions of the existing law: → Roman law was only of subsidiary authority, being superseded by countless territorial and local statutes or customs. This state of affairs was regarded as the cause of many long and unnecessary lawsuits (a similar criticism Bentham was later to direct against the → common law). A remedy was seen in new and clear state legislation adapted to the demands of the time.

While the criticism levelled against the → *ius commune* was more of a technical nature, the philosophical basis of the idea of codification was laid in the 17th and 18th centuries by the Law of Reason (→ natural law) and its new theory of state and society. The state was seen to be created by a social contract entered into by all individuals in order to ensure the protection of natural human rights, particularly property and liberty. The function of state legislation was to establish a 'standing rule to live by' (John Locke), an idea Bentham later developed into his famous utility principle according to which the purpose of any legislation must be to promote the greatest happiness of the greatest number. Another decisive contribution by the Law of Reason to the idea of codification consisted in its method of arranging the law in a rational order by way of rigorous logical-mathematical deduction.

Finally, the idea of codification was also strongly promoted by the Enlightenment. In order to free the individual from his medieval shackles and the traditional authorities, the law no longer was to be exposed, as a result of its opaque system of sources, to the arbitrariness of practitioners and judges. A code that stated all relevant rules in a clear manner should enable 'every man to be his own lawyer' (Jeremy Bentham) and make the learned lawyer redundant. The European monarchs that had been raised in the spirit of enlightened absolutism, particularly those of Austria and Prussia, readily took up these ideas. Not only were they eager to promote public welfare by streamlining the administration of justice and guaranteeing the rule of law, they also sought to emphasize the crown's monopoly over the legislative process and to attain legal unity within the national territory.

In order to achieve the aims that have just been outlined, a code needed to meet with several basic requirements: First, it had to be complete and comprehensive; in other words, it should neither contain gaps nor have to be supplemented by other sources of law. As Bentham famously put it: 'Whatever is not in the code of laws, ought not to be the law.' Secondly, if the citizen was expected to live according to its rules, the code needed to be written in a clear and simple language, a language that must not be Latin, but the language of the people. This was one of the factors that was to link codification to the ideas of the modern nation state and national identity. Thirdly, if the citizen was expected to have knowledge of its rules, the code needed to be published. This requirement gave origin to the practice of official promulgation of laws and found its expression also in the explicit adoption of the ancient maxim *error iuris nocet* in some early codifications.

3. The worldwide codification movement

The method of codifying the law has not been limited to private law, but has also been successfully applied to other areas, such as → commercial law (→ *Code unique*), criminal law and procedural law. The following overview focuses on the emergence of the national civil codes which, however, frequently went hand in hand with the codification of other fields of the law.

a) The codification movement in Europe

The beginning of the age of codification was marked by the → *Allgemeines Landrecht für die Preußischen Staaten* (1794), the French → *Code civil* (1804) and the Austrian → *Allgemeines Bürgerliches Gesetzbuch* (ABGB) (1811). Each of these codes was strongly linked with the → natural law idea of putting the entire law into systematic and exhaustive order in pursuance of a comprehensive plan for society.

However, after the end of Napoleon's reign the codification movement suffered a setback. In Germany the opposing viewpoints came to the fore in the famous codification dispute between Anton FJ Thibaut and Friedrich Carl von Savigny. While Thibaut passionately argued in favour of a common civil code for the German states, praising the advantages of unification and simplification of the law, Savigny fervently opposed this

idea in his famous programmatic piece entitled *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (1814). He regarded codification as an arbitrary and inorganic interference with the historical character of the law. Savigny did not regard legal unification as undesirable, but it had to be achieved on the basis of an 'organically progressive legal science'. However, the rise of the → historical school of law was not the only factor slowing down the codification movement. The main reasons were of a political nature: Germany, Switzerland and Italy were still lacking national unity, and the forces of the Restoration that had returned to power regarded the idea of codification as an attempt to undermine their authority.

For these reasons, it was only in the second half of the 19th century that a second major wave of codification set in. The most important codes from this period were intimately linked to the formation of new nation-states and aimed particularly at the attainment of legal unity. While Italy had managed to adopt its first → *Codice civile* already in 1865, Germany and Switzerland, for lack of legal competence on a federal level, were forced to proceed in various steps: a nationwide unification of the law was first carried out in specific, though practically important, areas (→ *Allgemeines Deutsches Handelsgesetzbuch* (ADHGB, 1861)); → Swiss Code of Obligations (OR) (1883)), with a number of civil codes being adopted on a regional level. Finally, the → *Bürgerliches Gesetzbuch* (BGB, 1896) and the → Swiss Civil Code (ZGB) (1907) brought the long desired national civil codes. As both had been thoroughly prepared by scholarly research, they could claim to be the maturest products of their kind and, henceforth, compete with the → *Code civil* for worldwide recognition and → reception. The Swiss model left its mark especially on the → Turkish Civil Code and the Turkish Code of Obligations (1926), while the BGB strongly influenced, inter alia, the → Greek Civil Code (1940).

Other civil codes of 19th-century Europe are not clearly related to one of the two principal codification waves, but were strongly influenced by the *Code civil*. This goes for the third Dutch Civil Code (1838; → *Burgerlijk Wetboek*), the first Romanian Civil Code (1864), the first Portuguese Civil Code (1867) and the Spanish → *Código civil* (1889).

A further wave of codifications, starting in the 1920s, took place in the socialist countries. Next to the civil codes of the different Soviet Republics it brought about, inter alia, the Hungarian Civil Code (1959), the → Polish Civil Code (1964) and the Civil Code of the German Democratic Republic (1975). Since the breakdown of socialism, these codifications, with just a few exceptions, have either been substituted (→ Russian Civil Code (1996)) or fundamentally reformed. The substitution of existing civil codes during the 20th century has also taken place in some western European countries, such as Italy (→ *Codice civile* (1942)), Portugal (1966) and the Netherlands (starting in 1970 → *Burgerlijk Wetboek*).

In the Nordic legal family the idea of codification has also been met with sympathy. Even if attempts for the elaboration of complete civil codes have never succeeded, particular areas, such as the law of → sale, could even be codified on a regional level (→ Scandinavia, harmonization of law).

b) The codification movement in other continents

The codification movement has also left deep marks in the former European colonies in Latin America (→ Latin America, influence of European private law) and northern Africa (→ Islamic countries, influence of European private law). The same is true for the East Asian countries (→ Japanese law, influence of European private law; → Chinese law, influence of European private law). As a rule, the civil codes that were enacted in these parts of the world closely follow one or several European models.

c) The codification movement in the common law world

The idea of codification has also found advocates in the → common law world, most prominently in the person of Jeremy Bentham. To him and his followers, codification looked like the perfect remedy for a legal tradition they regarded as archaic, unsystematic and largely inaccessible. However, apart from a few exceptions, such as the recent Companies Act (2006), English codification endeavours have continuously failed, a prominent example being the plan from the 1960s to create a 'Contract Code'. The strong opposition of most English lawyers towards the idea of codification can not only be ascribed to their scepticism towards the method of submitting entire areas of law to abstract rules, but is also to be explained with their fear of losing power and influence.

In the United States the idea of codification has been considerably more successful. Proof of this is not so much the Civil Code of Louisiana (1808), as this state, due to its history as a French and Spanish colony, has always been firmly rooted in the civilian legal tradition (similar to

the situation of the Civil Code of the Canadian Province of Quebec (1866 und 1994)). But especially in the mid-19th century, the desire to simplify and systematize the law was also quite strong in other federal states. The leader of this codification movement, the New York practitioner David Dudley Field, drafted various codes both for substantive and procedural law. Most successful was his Code of Civil Procedure, which was adopted by the New York legislature in 1848 and served as a model in numerous other federal states. Still, the so far most successful codification project in the United States stems from the 20th century: the Uniform Commercial Code (UCC) brought about the codification and nationwide unification of restricted, but economically highly relevant areas of the law. Clearly inspired by the idea of codification were also the → restatements elaborated by the American Law Institute.

4. Crisis of codification?

Despite the fact that to this day new civil codes have constantly been enacted (eg in Romania 2009), the second half of the 20th century has seen considerable debate on the crisis and future of the idea of codification. Natalino Irti, although not being the first to address the issue, coined the racy catchword of the 'era of decodification' in order to describe a phenomenon which could (and still can) easily be observed in all codified legal systems. While initially the code aimed at complete and comprehensive regulation, nowadays it tends to be surrounded and superseded by countless statutes that are often guided by other legal principles and written in a different terminology than the code. Examples can be found particularly in the areas of labour law (→ European labour law) and consumer protection law (→ consumers and consumer protection law). What is more, the answers to many key questions of private law are no longer to be found in the code, but in the case law of the courts, as may be exemplified by French tort law where the handful of sections in the → *Code civil* (Arts 1382 to 1386) have hardly retained any practical relevance. The importance of civil codes has also been diminished by the modern constitutions which have taken over the functions of guaranteeing the fundamental rights of the individual and establishing the fundamental values of a society, thereby exerting a significant influence also on private law. Finally, competition for the code also comes from outside the national borders: international conventions and especially the supranational law of the → European Community, more and more frequently deal with core areas of private law and thus intrude into the traditional sphere of application of the civil codes.

Not only the described phenomena, but also their causes are widely agreed upon. In the democratic and pluralistic industrial society of today it is much harder to establish general rules than it was in the 19th century. Technical progress and social change require constant adaptation and further development of the law. The modern legislature therefore prefers unsystematic 'piecemeal legislation' over systematic codification, as it is thereby put in a position to react quickly and specifically to new problems. The shift of state functions is regarded as another important factor: While the 19th-century liberal state restricted itself to establishing the basic rules of private legal relations, the modern welfare state sees its task in creating social justice. Finally, codification is difficult to square with a democratic legislative procedure. The Parliament not only lacks the necessary expertise, but is also subject to the demands of day-to-day politics. Besides, numerous 'informal legislatures' such as lobby groups exert considerable influence, disturbing the balance of many a promising draft or even bringing projects to a halt.

The complete abandonment of the idea of codification has been regarded by many as the only 'therapy' for the described 'diagnosis'. Today, however, this postulate is widely considered to be an overstatement. Defenders of the idea of codification point out that the codes still regulate many core areas of private law and that they are therefore not just of subsidiary importance. They refuse to regard unsystematic and often inaccurate 'piecemeal legislation' as an inevitable fate, but rather ascribe it to the lack of expertise and interest on the part of the legislature. Finally they point at the longevity of the → *Code civil*, the → *Allgemeines Bürgerliches Gesetzbuch* (ABGB) and the → *Bürgerliches Gesetzbuch* (BGB) to refute the argument that codification inevitably leads to an ossification of the law.

5. The functions of codification in modern times

Even if not regarded as outdated, it is widely agreed that the notion of codification and its original functions need to be rethought. For instance, the creation of a code can no longer be justified by the aim of publicity of the law. The expectation that the layman could possibly know and understand all relevant legal rules was already an illusion at the beginning of the age of codification; and this is even more true in times of an ever increasing number of legal statutes. To be abandoned, or at least to be put into perspective, is also the ideal of completeness of a code, which, by the way, not even the → *Allgemeines Landrecht für die Preußischen Staaten* (1794) with its close to 20,000 sections had managed to pursue in all its consequences. In particular, new, still unexplored areas of the law are often better dealt with in special statutes at first and only at a later stage incorporated in the code by way of a 'recodification'. Additionally, the legislature needs to exercise self-restraint and leave the task of further developing the law to a considerable amount to the judiciary and to legal science. This aim can not only be achieved by employing abstract or indeterminate legal concepts, but also by consciously leaving 'gaps'.

The aims of unifying the law and founding national identity also have to be reassessed. They too, at a certain point, were already regarded as obsolete, but are presently experiencing a remarkable renaissance in the debate on a → European Civil Code.

Unchanged in any case is the code's function of establishing and preserving the systematic integrity of a legal system. By highlighting the inner connections between the different areas of law and their underlying principles, a code helps to find coherent solutions also for situations which are not expressly dealt with. Furthermore it provides the necessary conceptual background for large parts of statutory legislation. These substantive benefits of systematization are accompanied by a benefit of a more formal nature. The technique of codification prevents the fragmentation of the legal order into countless sources of law that even the trained lawyer would no longer be able to handle. The code thus serves as a tool to 'tidy up' the legal order at periodical intervals, thereby making a central contribution to the clarity and accessibility of the law.

6. Conclusion and outlook

Codification, in the words of Franz Wieacker, is a unique and priceless creation of European legal culture. The idea of codification has distinctively shaped the modern civilian tradition and left its mark on legal thinking all over the world. Although the original ends of codification had to be revised in the second half of the 20th century, it continues to be a valuable and time-tested tool of legislative technique also in the 21st century.

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Jan Peter Schmidt

Código Civil

1. Formation

When Spain achieved political unity towards the end of the 15th century, a multiplicity of regional or local civil laws was in force. These were known as foral laws (*fueros*) and had evolved rather autonomously in particular parts of the country, where the royal law—largely identical to the historical law of Castille—was applicable only as subsidiary law (*derecho común*). The royal law was usually being published in piecemeal collections of legislation from various sources (*recopilaciones*). For example, the *Nueva Recopilación*, proclaimed by Phillip II in 1567, relied on the *Leyes del Toro* (1505) which had originated under the reign of Isabella I of Castille and Ferdinand II of Aragon and on the *Ordenamiento de Alcalá* (1348) which had been proclaimed by Alfons XI and was based, in turn, largely on a translation of the Visigothic *Liber Iudiciorum* (654) and the *Siete Partidas* by Alfons the Learned (1252–84), of which one of the main sources was the → *Corpus Juris Civilis*. Even the *Novísima Recopilación* (1805) was only a revised version of these sources. Despite their different political fate, many foral laws remained in existence within the Kingdom of Spain; however, due to the lack of legislative powers, in some territories they suffered from petrification.

In Spain, the thrust for legal unification by way of → codification gained ground towards the beginning of the 19th century. Following the Constitution of Cádiz (1812), a commission was charged with drafting a civil code. Whereas the *Código de comercio* was passed as soon as 1829, a complete draft concerning civil law could be presented only in 1851. It relied on the comparative

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