

# Hoofdstukken uit de Europese codificatiegeschiedenis

## Hoofdstuk 1 Codificatie

Een van de onderscheidingen, die reeds de Romeinen betreffende het recht maakten, is die in het geschreven, *ius ex scripto*, en het ongeschreven recht, *ius ex non scripto*. Het spreek welhaast vanzelf, dat het ongeschreven recht ouder is dan het geschreven recht. De behoefte aan optekening van het recht vloeit namelijk voort uit de behoefte aan rechtszekerheid. Niet elke optekening van recht is wat wij noemen een codificatie. Het begrip codificatie is van betrekkelijk recente datum en stamt uit de tijd van de verlichting; het woord werd voor het eerst gebruikt door de Engelsman Jeremy Bentham. Er bestaan drie kenmerken voor een codificatie: ontbreekt er een van, dan kan men van een codificatie niet meer spreken. De kenmerken zijn:

- ❖ Een overheid, die gezag uitoefent over haar onderdanen
- ❖ Op schrift gesteld recht
- ❖ De volledigheid van het recht, die bewerkstelligd wordt door het machtswoord van de overheid, dat aan dat recht exclusieve gelding verleent.

De rechter zou volgens een beroemd woord van Montesquieu niet meer zijn dan een onbezield wezen, die als enige taak had 'la bouche de la loi' te zijn. Iedere wet evenals ieder tekst heeft uitleg nodig en het is de uitlegger, die betekenis aan de wet geeft, met andere woorden de inhoud ervan bepaalt. De macht van de wetgever hierin is beperkt; hij kan wel wetten uitvaardigen, maar hij heeft de toekomstige uitlegging niet in de hand. De wetgever kan zijn eigen wetten uitleggen, dit noemt men authentieke interpretatie. Echter dit lost niks op, aangezien ook deze teksten weer moeten worden geïnterpreteerd, waardoor het laatste woord altijd is aan de uitlegger. Een andere poging van de wetgever om de uitlegging in eigen handen te hebben is de situatie waarin de rechter verplicht wordt uitleg aan de wetgever te vragen. Justinianus bijvoorbeeld beval, dat de rechters in alle gevallen waarin een wet uitlegging behoefde die uitlegging aan de keizer moesten vragen. Een verplicht voorgeschreven uitleg wordt in de tijd van de Verlichting ook wel *référé législatif* genoemd. Ook deze constructie is ondeugdelijk, aangezien de rechter zelf bepaalt of de wet naar de wetgever verwezen dient te worden. De receptie (het overnemen) van het Romeinse recht in West-Europa vond niet alleen haar oorzaak in de voortreffelijkheid van dit recht, maar ook en vooral in het feit dat het werd beschouwd als het geldende recht van het christelijke *imperium Romanum*. Er bestaan een aantal functies van de codificatie:

- ❖ De rechtszekerheid (Nulla poena sine lege poenali ofwel het Nulla poena beginsel)
- ❖ De economische functie: het grensoverschrijdende handels en betalingsverkeer vraagt om een eenvormige regeling.
- ❖ De politieke functie: het burgerlijk recht is een belangrijk middel om een nationale eenheid te smeden en te verstevigen.

Elke wet behoeft uitlegging en iedereen legt de wet veelal onbewust uit. Er zijn vele uitleggingen mogelijk. Om enige ordening te brengen in de veelheid van interpretaties heeft men wel een indeling gemaakt van wijzen van uitlegging die te baat kunnen worden genomen:

- ❖ Grammaticale interpretatie (welke betekenis hebben de woorden in het dagelijks spraakgebruik)
- ❖ Wetshistorische interpretatie (wat heeft de wetgever destijds met de betreffende tekst bedoeld?)

# Hoofdstukken Uit De Europese Codificatie Geschiedenis

**Johan van der Walt**



## **Hoofdstukken Uit De Europese Codificatie Geschiedenis:**

Inleiding tot de Europese rechtsgeschiedenis Randall Lesaffer, 2008 Overzicht van de historische ontwikkeling van de Europees continentale rechtstraditie      Hoofdstukken uit de Europese codificatiegeschiedenis J. H. A. Lokin, Willem Jans Zwolve, C. J. H. Jansen, 2025      **Hoofdstukken uit de Europese codificatiegeschiedenis** J. H. A. Lokin, 2001

**Hoofdstukken uit de Europese codificatiegeschiedenis** Johannes Henricus Antonius Lokin, Willem Jans Zwolve, 2014 Beknopt overzicht van de codificatiegeschiedenis van een aantal West Europese landen      **The Scope and Structure of Civil Codes** Julio César Rivera, 2014-02-04 This detailed analysis of the content and configuration of civil codes in diverse jurisdictions also examines their relationship with some branches of private law as family law commercial law consumer law and private international law It analyzes the codification decodification and recodification processes illuminating the dialogue between current codes and private law legislation in general with Constitutions and International Conventions The commentary elucidates the changing requirements of civil law as it shifted from an early protection of patrimony to a support for commercial and contractual law It also explains the varying trajectories of civil law which in some jurisdictions was merged with religious legal tenets in its codification of familial relations while in others it was fused with commercial law or indeed codified from scratch as a discrete legal corpus Elsewhere the volume provides material on differing approaches to consumer law where relevant legislation may be scattered across numerous statutes and also on private international law a topic of increasing relevance in a world where business corporations have interests in multiple jurisdictions and often play one off against another The volume features invited contributions from leading scholars in the field of private law brought together for an in depth analysis of the current regulatory attitude in this field of the law in jurisdictions with diverse legal systems and traditions In current times we are witnessing the adoption of diverging regulatory solutions Through the analysis of the past and present of private law regulation the volume unveils the underlying trends and relevance of the codification method across the world      **European Law in the Past and the Future** R. C. van Caenegem, 2002 R C van Caenegem considers the historical reasons behind European legal diversity      Hoofdstukken uit de Europese codificatiegeschiedenis Johannes Henricus Antonius Lokin, Willem Jans Zwolve, 2014 Beknopt overzicht van de codificatiegeschiedenis van een aantal West Europese landen      Hoofdstukken uit de Europese codificatiegeschiedenis, 2009 Dit is het e book uittreksel behorend bij het boek Hoofdstukken uit de Europese codificatiegeschiedenis 3e druk ISBN 9026835892 van J H A Lokin en W J Zwolve Uittreksels van StudentsOnly bieden je een goede manier om de stof uit het boek nog sneller en makkelijker onder de knie te krijgen Ze geven beknopt in ca 10% van het aantal pagina s van het boek een compleet overzicht van alles wat belangrijk is In het uittreksel wordt regelmatig naar pagina s paragrafen tabellen of figuren in het boek verwezen het is dan ook moeilijk te gebruiken zonder het boek maar des te beter samen met het boek Bron Flaptekst uitgeversinformatie      The Cambridge Companion to European Union Private Law Christian

Twigg-Flesner,2010-05-20 A critical 2010 introduction to European Private Law written by the leading scholars in the field

Elgar Encyclopedia of Comparative Law, Second Edition J. M. Smits,2012-01-01 Acclaim for the first edition This is a very important and immense book The Elgar Encyclopedia of Comparative Law is a treasure trove of honed knowledge of the laws of many countries It is a reference book for dipping into time and time again It is worth every penny and there is not another as comprehensive in its coverage as Elgar's I highly recommend the Elgar Encyclopedia of Comparative Law to all English chambers This is a very important book that should be sitting in every university law school library \_ Sally Ramage The Criminal Lawyer Containing newly updated versions of existing entries and adding several important new entries this second edition of the Elgar Encyclopedia of Comparative Law takes stock of present day comparative law scholarship Written by leading authorities in their respective fields the contributions in this accessible book cover and combine not only questions regarding the methodology of comparative law but also specific areas of law such as administrative law and criminal law and specific topics such as accident compensation and consideration In addition the Encyclopedia contains reports on a selected set of countries legal systems and as a whole presents an overview of the current state of affairs Providing its readers with a unique point of reference as well as stimulus for further research this volume is an indispensable tool for anyone interested in comparative law especially academics students and practitioners Redefining Codification Dirk Heirbaut,2024-12-10

More than half of the world's population lives under law codes Yet defining the concept of codification remains elusive Rather than delving into abstract theories this book provides a rich and contextual comparative legal history of codes in France Germany the Netherlands and Belgium from the late eighteenth century to the present The author starts by examining the evolution of French German Dutch and Belgian codes in their political and comparative context thus challenging deeply rooted national narratives He covers the well studied civil codes and the often overlooked commercial and procedural codes and drafts that failed to become law Against this backdrop the book embarks on a comprehensive analysis of the factors contributing to the success or failure of codification efforts Employing an innovative method of comparative legal history Redefining Codification explores the key players and objectives behind codification revealing that traditional notions of codification are far removed from reality Following the deconstruction of some universal truths about codifications this volume offers fresh insights into the behind the scenes of the lawmaking machinery and an empirically based definition of codification

Nationalism and Private Law in Europe Guido Comparato,2014-12-01 While the internationalisation of society has stimulated the emergence of common legal frameworks to coordinate transnational social relations private law itself is firmly rooted in national law European integration processes have altered this state of affairs to a limited degree with a few albeit groundbreaking interventions that have tended to engender resistance from various actors within European nation states Against that background this book takes as its point of departure the need to understand the process of legal denationalisation within broader political frameworks In particular it seeks to make sense of opposition to Europeanisation at

this point in the evolution of European law when despite growing nationalist attitudes great efforts have been made to produce comprehensive legal instruments to synthesise general contract law an area that has traditionally been solely within the ambit of nation states Combining insights from the disciplines of law history and political science the book investigates the conceptual and cultural associations between law and the nation state examines the impact of nationalist ideas in modern legal thought and reveals the nationalist underpinnings of some of the arguments employed against and somewhat paradoxically even in support of legal Europeanisation The author's research for this book has been supported by the Hague Institute for the Internationalisation of Law

The Making of European Private Law J. M. Smits, 2002 The private law of the Member States of the European Union has become more and more European The fact that the European Union is making ever more use of directives as an instrument to achieve private law goals is in this context not the most important development Of much more substance is the fact that one increasingly realises that a uniform European private law has to be created in one way or another in the near future if a truly common European market is to function at all Over the last decade Europe has witnessed the emergence of a vigorous debate about the need for and the feasibility of a future European ius commune in the field of private law This book critically discusses this debate and provides a systematic overview of the various initiatives taken and describes the fragmentary European private law that already exists by way of European directives international conventions etc In addition the author aims at making a contribution to the debate by suggesting that the experience good or bad of the so called mixed legal systems is of great importance to the European private law venture and to the development of a uniform private law for Europe This idea is supported by insights from Law Economics and illustrated by South African law in particular This idea of European private law as a mixed legal system is then applied to the law of contracts torts and property This book takes up the challenge to give a critical examination on the various methods of creating this ius commune A detailed table of contents list of abbreviations bibliography table of cases and index complete the book and make it a valuable study for everyone interested in European private law

**New Frontiers** Paul J du Plessis, 2014-03-17 An interdisciplinary edited collection on social science methodologies for approaching Roman legal sources Roman law as a field of study is rapidly evolving to reflect new perspectives and approaches in research Scholars who work on the subject are i

**The Horizontal Effect Revolution and the Question of Sovereignty** Johan van der Walt, 2014-08-25 That the recent turn in European Constitutional Review has effectively brought about a revolution in European law has been observed before At issue are two major developments in European judicial review On the one hand the European Court of Human Rights has been collapsing traditional boundaries between constitutional law and private law with a series of decisions that effectively recognized the horizontal effect of Convention rights in the private sphere On the other hand the European Court of Justice has also given horizontal effect to fundamental liberties embodied in the Treaty on the Function of the European Union in a number of recent cases in a way that puts established boundaries between Member

State and Union competences in question This book takes issue with these developments by bringing to the fore a key issue that the horizontality effect debate has hitherto largely overlooked namely the question of sovereignty It shows with detailed references to especially the American debate on state action and the German debate on *Drittwirkung* that horizontal effect cannot be understood consistently without coming to grips with the conceptions of state sovereignty that inform different approaches to horizontal effect      *Regional Private Laws and Codification in Europe* Hector L. MacQueen, Antoni Vaquer, Santiago Espiau Espiau, 2003-10-16 Regions within European Union member states such as Scotland in the UK and Catalonia in Spain have their own legal systems how will the process of Europeanization affect them This volume examines the phenomenon of regional private law in the European Union considering jurisdictions and laws below those of the member states and drawing comparisons with other such jurisdictions elsewhere in the world such as Louisiana and Quebec The whole is considered in relation to the development of European private law and the use of codification in that process This volume will be of interest to academic lawyers worldwide advanced law students and European policy makers      **The Making of Criminal Law** Aniceto Masferrer, 2025-11-12 The separation of powers produced by the Enlightenment period reinforced the myth of the perfection of the law with criminal law being dependent on the principle of legality Demonstrating that this principle has not fundamentally altered judges methods of interpretation and decision making this collective volume explores the role of case law in the making of modern criminal law from the late 19th century to the end of the 20th century It enables us to gauge the influence of case law developed and to assess the extent to which it contributed to major criminal law decisions and the emergence of model criminal codes The book takes a comparative view across various European and American jurisdictions and offers an overview of European civil law traditions along with comparisons from the Americas The focus is on Western legal historiography which has hitherto been notably under researched The chronological point of departure is marked by the creation of the Supreme Court and the cassation in each jurisdiction Each chapter contains a short introduction to the role of jurisprudence in the making of criminal law from the 19th century onwards in that jurisdiction followed by an exploration of the contribution of the legal doctrine of the Supreme Court in the making or development of a particular criminal offence or institution The book will be of interest to scholars and historians working or teaching in the areas of legal history comparative legal history criminal law and comparative law It will also be of use to scholars interested in the study of law in different socio cultural contexts      **Towards a Chinese Civil Code** Lei Chen, C.H. van Rhee, 2012-11-13 Currently China is drafting its new Civil Code Against this background the Chinese legal community has shown a growing interest in various legal and legislative ideas from around the world Towards a Chinese Civil Code aims at providing the necessary historical and comparative legal perspectives The book addresses the following topics property law contract law tort law and civil procedure      *Viva Vox Iuris Romani* Luuk de Ligt, 2021-11-15 With contributions by J A Ankum O Behrends G C J J v d Bergh A M J A Berkvens Th E v Bochove F J Bruinsma R Feenstra R Forrez A Fl Gehlen F W

Grosheide J Hellebeek M L Hewett J B M van Hoek A M Hol E Hondius C J H Jansen R Kn tel C de Koninck C Krampe B Kupisch L de Ligt J H A Lokin J Menner O Moorman van Kappen P L N ve C H van Rhee E J H Schrage A J B Sirks E Slob B H Stolte R Verstegen M v d Vrugt A Wacke L Waelkens T Wallinga A Watson L C Winkel F B J Wubbe W J Zwolve **Property Law and Economics** Boudewijn Bouckaert, 2010-01-01 This book contains illuminating and carefully written literature reviews on the central topics of the economics of property rights and institutions As a bonus it includes two fascinating chapters on topics off the beaten path slavery and new types of property rights in environmental goods This book will be indispensable for students and experienced scholars alike Eric Posner University of Chicago Law School US This study covers property law and property rights providing a full summary and comprehensive bibliography of the existing law together with discussion from an economic perspective on the most important aspects of property law Leading experts have brought together their knowledge and insight on a full range of issues including comparative property law and the history of property law to create a truly autonomous interdisciplinary resource This essential reference work will strongly appeal to scholars and students enrolled in academic programmes of law and economics Academic lawyers involved in research and teaching of private common law practicing lawyers in the field of real estate law as well as economists involved in researching development economics and transition economics will also find this an invaluable resource

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