

Dirk Heirbaut, *Redefining Codification. A Comparative History of Civil, Commercial, and Procedural Codes*, Oxford University Press, Oxford, 2025, 462 pp. [ISBN: 9780198947370.001.0001]

Dirk Heirbaut's last work *Redefining Codification: A Comparative History of Civil, Commercial, and Procedural Codes* offers a major new perspective on the concept and practice of legal codification, challenging traditional understandings through meticulous comparative legal history and empirical analysis. The book is of paramount relevance within the field of legal history and summarises a notably fresh approach to the phenomenon of codification. It was published by Oxford University Press in 2025, and it most certainly constitutes an essential resource for both scholars and practitioners interested in the complexities of codification within the civil and common law systems.

One of the first things the reader will realise is its carefully designed dual structure. The first part thereof explores the evolution of major codes in France, Germany, the Netherlands, and Belgium from the late 18th century to current times.¹ This comparative discussion covers such content without overlooking an accurate contextualisation of these legal texts within their political and social environments. Heirbaut systematically disassembles enduring national myths and narratives about codification regarding the procedural, civil, and commercial areas, just as some other authors did so with regards to the criminal codification.² He reveals that the traditional notion of codification, as a monolithic and coherent act of legal rationalisation, rarely matches reality. The second part is essentially devoted to analysing several factors leading to the minor or major success -and even failure- of the codification enterprises.

The author's main hypothesis is that defining codification has been a complex topic. Besides, much of the traditional conceptual frame behind it is outdated. Addressing codification as an idealisation of a pure model that meets the so-called principles of unity, clarity, and systematisation is an unrealistic approach that only generates more problems than it solves. The reader should not forget that frequently the content and form of the codes was mainly shaped by principles other than the previous ones. Certainly, it would be a very categorical assertion to hold that Prof. Heirbaut operated through the lens of realism when preparing this magnificent work, but there is an undeniable degree of it in *Redefining Codification*. Heirbaut's analysis rejects the idea of codification as a timeless reality and focuses on political and cultural factors. He successfully proves that the idea of a 'narrative' is not real: those national myths of codification were rather convoluted. Plus, they did not advance in a linear manner, but contradictions arose at virtually every point of the codification processes.

Prof. Heirbaut heavily relies on empirical legal history when dealing with the actors, objectives, and the contextual factors leading to codification. One of the most original traits of this work is that the concept proposed by the author does not rely deeply on theoretical or iusphilosophical analysis, yet it is rather the outcome of practice.

¹ Their main scope focuses on civil, commercial, and procedural areas.

² Masferrer, A. (ed.), *The Western Codification of Criminal Law. A Revision of the Myth of its Predominant French Influence*, Dordrecht-Heidelberg-London-New York: Springer (Collection 'History of Law and Justice'), 2018, 427 pp.

Once the variety of methods and goals of codification among several nations and some other preliminary concepts have been exposed, the analysis focuses on four countries: France, Germany, the Netherlands, and Belgium. The research holds a systematic structure, since the four countries have a three-fold partition: civil, commercial, and procedural law. This, however, does not detract from taking into account additional sub-headings concerning the particular circumstances of each country.

France appears to be a two-fold reality. It constitutes a paradigmatic case as well as a problematic laboratory. The codification analysed here is focused on these three areas.³ Thus, the focus is set on private codification, but this one was historically articulated with a strong executive and a relatively weak parliament. Therefore, the design and viability of subsequent reforms were heavily conditioned. Heirbaut examines not only the Civil Code of 1804, but also multiple attempts, drafts, and reformulations that reveal tensions between political centralisation and social demands.

There are some other key thematic areas developed by Prof. Heirbaut. The origin and export of the Napoleonic model are analysed. Indeed, there is a direct link between the political authority that promoted the *Code civil* with the idea of a code as an instrument for building the modern State. He traces how that model was exported and then reinterpreted in different contexts. Also, as we will point out in the conclusion, it is not limited to substantive civil law: it examines the commercial code and procedural codes. What's more, the always relevant topics of "which subjects are codified" and "in which order" were a result of the pressure exerted from certain economic groups and was also the consequence of technical objectives. Due attention is paid to continuous reforms of codes and to aborted projects as well. The French model was not perfect and most of the idealisation thereof occurred afterwards: right in the moment in which everything took place the general norm was erosion and resistance amongst the main implied actors (Parliament, jurists, institutions, administration, etc.). The French analysis is a very thorough one, as it lays on primary sources, ministerial commissions, and administrative reports. One can sense the extremely complicated balance that was pursued in the French codification between the social legitimacy and the political needs of the legislature and the executive.

The chapter devoted to Germany points out the winding process of legal unification until the entry into force of the BGB.⁴ Such a process was rather tortuous due precisely to the long -yet rich- discussion revolving around pandectism and other doctrinal debates focused on the superiority of the historical school. However, even in a dogmatic legal culture such as the German one, Heirbaut still holds that agreements -and failure to reach them- were central to this whole process, thus challenging this traditional character of the German legal historiography. Germany has witnessed one of the longest formations of a legal code in Europe, as the astonishing variety of regional codes ended up determining and setting the technical strategies behind the unifying process. As the author points out, the process was far from being considered as 'normal' according to the material they had:

³ Namely, civil, commercial, and procedural law.

⁴ *Bürgerliches Gesetzbuch* or Civil Code.

“None of the three codes followed the normal pattern for legislation in Germany, in which the national Ministry of Justice (or its equivalent) steers the drafting process from the beginning to the end”.⁵

The author proposes that if France had been the “model of codification” for a long time, Germany was the “laboratory”.⁶ The influence of the jurists, although not determining, was important since there was no such thing as an academic imposition, but rather a hybrid and negotiated outcome. Additionally, this chapter also offers some insights on the reluctance of the Nazi regime to be bound by any sort of codes and, afterwards, the different treatment given by the German Democratic Republic (GDR) and the Federal Republic of Germany (FRG). Thus, the narrative of a unique BGB must be disregarded.

The chapter devoted to the Netherlands offers a rather conflictive insight. This country received the Napoleonic influence but simultaneously decided to adopt its own ways. The codification process was not linear at all. The drafting of the *Burgerlijk Wetboek* was produced during a great period of nationalism. After the French occupation, Dutch legal scholars created adaptations which attempted to reflect their own traditions. That being said, it was also important to reach a difficult balance allowing for national politics to have a say in the process. Towards the end of the 19th century, Dutch jurists tried to revise them, but they failed. Meijers began his drafting of a new code integrating commercial law. Undeniably, Meijers’ project was the product of exhaustive consultation and development, culminating in the new code’s partial introduction starting in 1970, with the final books being codified in 1992. Later, two of its books followed, and the Dutch Civil Code still comes close to incorporating all substantive private law. However, a new code may not even be necessary as the mindset of many jurists on an efficient civil procedure has changed anyway. A very interesting aspect is to find out why certain solutions succeeded in the Netherlands yet could not be implemented in some of its neighbours. The answer to this question finds itself in the drafts and technical memoirs analysed by Prof. Heirbaut.

Belgium drafters offered a more practical solution to the issue of codification. They aimed at updating their law through partial reforms, rather than through an integral codification. After its independence in 1830, Belgium maintained a great part of the Napoleonic corpus. However, the key idea was not to invent from scratch but to adapt it, usually with amendments made through complementary legislation. The Belgian solution was deliberately responsive to practice and, particularly, to political reality. It should not be forgotten the several linguistic tensions and state structure which conditioned the codification technique.

The outcomes of these concrete models are exceedingly illustrative. There is no such thing as a unique model. Even if one may think that this idea of the written code is common, processes and functions differ and depend on the political structure (the Parliament and Executive), legal traditions, and social pressures. This is why Prof.

⁵ Heirbaut, Dirk, “Germany”, *Redefining Codification: A Comparative History of Civil, Commercial, and Procedural Codes* (Oxford, 2025; online edn, Oxford Academic, 6 Dec. 2024), <https://doi.org/10.1093/9780198947370.003.0003>, accessed 11 Aug. 2025.

⁶ Heirbaut, D., *Redefining Codification. A Comparative History of Civil, Commercial, and Procedural Codes*, Oxford: Oxford University Press, 2025, p. 108.

Heirbaut insists on redefining codification empirically. Furthermore, one can learn as well from failures and drafts which did not prosper. They are useful to comprehend the institutional limitations and political priorities of a particular nation. Similarly, there were factors whose presence, or lack thereof, directly conditioned codification: institutional stability, political leadership, doctrinal consensus, administrative capacity to apply the new rules, and adaptability of the text (whether flexible or rigid). These factors can be observed in a different manner in each country.

In a nutshell, codification processes are understood as political and social phenomena given that the context has a determining force according to Prof. Heirbaut. Indeed, some of them are the result of the national unification goals. Therefore, it is not unusual within traditional historiography to see how the construction of a nation state was necessarily linked towards a liberal economy and the drafting and approval of codes. Notwithstanding that, Heirbaut goes a step further, and maintains that successful codes were not necessarily the most innovative ones or the ones holding a high degree of doctrinal analysis or technical perfection, but the ones seeking for a compromise and pact. Such perspective results are helpful even for countries that were not included in the present study. Spain and its codification process would be a good example. The Kingdom of Spain enacted its first civil code in 1889, almost a century after the first nations did so. Taking the empirical legal history approach of Prof. Heirbaut, it could be said that one should take into account the political circumstances of 19th century Spain. The delay in creating a Spanish Civil Code (finally approved in 1889) can be explained by the fact that Spain had been dealing with an extremely fragmented legal system since the Middle Ages, compounded by political and cultural tensions that made rapid unification almost impossible. The Napoleonic Wars (1808-1814), the turbulent reign of Ferdinand VII, the Carlist Wars, and changes of regime (absolute monarchy, liberalism, republics, restorations, etc.) made it very difficult to reach an agreement. Each political shift involved changes in legal orientation, thus interrupting codification projects. The traditional conflict between centralism and regionalism persisted as regions with *fueros* (Navarre, the Basque Country, Aragon, Catalonia, the Balearic Islands, Galicia, and Valencia) feared losing their institutions and customs. Codification was perceived as a centralising instrument of Madrid. On top of that, there were other ideological tensions: progressive liberals wanted a code inspired by the Napoleonic Code and legal equality whereas conservatives and moderates defended the preservation of traditions, the influence of the Church, and the respect for historical norms. Be that as it may, Spain decided to finish this codification process by means of practical agreement: the civil code would be applied directly to the regions possessing no *fueros*,⁷ while in the regions with *fueros* it would be applied only in a subsidiary manner.⁸

In Heirbaut's scope, pragmatism plays a major role, and codification should be defined in a wider manner: as legislation that covers a relevant part of law and offers a framework for legal development. The key aspect to this respect is to avoid conceiving codification as a systematic and exhaustive set.

⁷ Usually known as *territorios de Derecho común*, as opposed to the so-called *territorios de Derecho foral*. The list of *territorios de Derecho común* are the following ones: Andalusia, Castile and León, Castilla-La Mancha, Extremadura, Madrid, Murcia, La Rioja, Cantabria, Asturias and the Canary Islands.

⁸ This meant that if no solution could be found within the legal order of the region, then the Spanish Civil Code would be applied.

We find ourselves before a cutting-edge work in the field of legal history. Thanks to the clear, direct-to-the-point style of the author, this work is highly recommended for newcomers, but it is also vital for specialists on the matter, such as legal historians, experts in both common law and civil law traditions, and scholars focusing on codification, nation-building, and legal institutions. Furthermore, the manual should be taken as a milestone reference regarding code drafters and legislators. Most certainly, they will benefit from an outstanding compendium of past errors, methodological difficulties, and best practices that can be drawn from Prof. Heirbaut's exhaustive analysis. It is also important to highlight the emphasis on procedural and commercial codes -since usually most analyses disregard them or focus excessively on civil codes. This is particularly helpful to obtain a broader understanding of the functioning of codification throughout history.

Finally, we ought to conclude that Prof. Heirbaut's work is a consistent, empirical work that stands out for its rigour and for debunking the most extended myths that previous, abstract, purely theoretical works have repeated or, at least, overlooked. It is a vital contribution to the field of legal history that will help the reader to hold a different approach to the phenomenon of codification, as it has set a new standard for scholarship.

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