THE GERMAN CIVIL CODE.

(Das Bürgerliche Gesetzbuch.)

SOURCES—PREPARATION—ADOPTION.

The magnitude of an attempt to codify the German civil laws can be adequately appreciated only by remembering that for more than fifteen centuries central Europe was the world's arena for startling political changes radically involving territorial boundaries and of necessity affecting private as well as public law.

With no thought of presenting new data, but that the reader may properly marshall events for an accurate comprehension of the irregular development of the law into the modern and concrete results, it is necessary to call attention to some of the political and social factors which have been potent and conspicuous since the eighth century.

Notwithstanding the boast of Charles the Great that he was both master of Europe and the chosen propagandist of Christianity and despite his efforts in urging general acceptance of the Roman law, which the Latinized Celts of the western and southern parts of his titular domain had orig-
inally been forced to receive and later had willingly retained, upon none of those three points did the facts sustain his vanity. He was constrained to recognize that beyond the Rhine there were great tribes, anciently nomadic, but for some centuries become agricultural when not engaged in their normal and chief occupation, war, who were by no means under his control. His missii or special commissioners to those people were not well received and his laws were not much respected. His Christian missionaries were not welcomed and sometimes did not return. Indeed, in the very heart of his eastern dominions the Saxons for thirty years defended their tribal customs and the freedom of their fields and forests. On the northern border along the Baltic he found Slavs, who bowed to his superior strength but never fully yielded to his authority. Even after he was crowned Emperor at Rome on that historic Christmas day of 800 A.D. and had inaugurated such truly beneficent measures as periodical national assemblies for the enactment, or at least approval, of laws, the rule of territorial districts by earls (grafen), the confirmation of local laws in different sections and the preservation of the divers customs in durable form, still was he far from governing all the people of his great empire.

A glance at the map shows the territory of modern Germany almost devoid, in his day, of the comparatively large cities then already founded throughout other parts of Europe. At spots along its borders where the Roman legions had penetrated stood settlements, sentinel-like, marking the frontier of the law, the religion and the commerce of Italy. The only city of moment then existing within the tribal lands was Magdeburg. There were a few towns on the Baltic and the rivers to the north, but save Stettin, on the Oder, they were not in touch with the wild interior. The lines of Roman domination were attested by Cologne, Bruges, Wurzberg, Franckfort-on-the-Main and Utrecht. To the north, Bremen was founded by Charles himself as was also Hamburg.

So far as he did make his supremacy felt he left some enduring effects upon the German law. He confirmed the Salic Law of the fourth century, the Law of the Ripuarian Franks of the sixth century, and the code of the Alamans, originally compiled by Chlothaire I. (497-561 A.D.) as the Pactus,
and two centuries later revised by the Duke of Soube-Landfried and promulgated as the *Lex Alanannorum Landfridana*. The Bavarian code (*Lex Baiwariorum*), originally based on that of the Alamans but recast in the seventh century by the incorporation of many laws of the Visigoths and Franks was left undisturbed as was the *Lex Frisonum*, framed by the Frisians for Mittelfriesland. The Lombard laws also met his approbation. They were the *Edictum Theodorici*, the Ostrogothic Law of the sixth century, the *Edictum Rotharis* (seventh century), the *Rachis Leges*, the *Luitprandi Leges*, the *Grimoaldi Leges* and the *Aistulphi Leges* (eighth century). These bodies of laws were not only approved for their several countries but the preparation of others was encouraged. The *Lex Angliorum et Werinorum, hoc est Thuringorum* was prepared under his direction for the guidance of the tribes to the west of the river Saale. He likewise promulgated the *Law of the Saxons* (*Recht der Alten Sachsen: Richthoffen*). All of these efforts to give certainty to the laws, generally referred to as *Leges Barbarorum* exercised very material influences later. (*Geschichte der deutschen Rechtsquellen: Stobbe*). It is clear that while Charles recognized that distinction between "*le pays du droit écrit*" in the south where Rome had left ineffaceable traces of law and language and "*le pays du droit coutumier*" in the north where the tribal system, local laws and different dialects remained he was, nevertheless, much impressed with the Civil Law as a means of making his people one in fact as well as in theory. The churchmen, already reaching for influence in temporal affairs and being practically the only men of letters, urgently promoted this view which was also reinforced by the recognized law of nationality. This early principle had prompted Alaric II. (484-507 A. D.) to promulgate the *Breviarium Alaricianum* composed of all the legislation special to the Romans of his realm which in time became the general code for all colonists and travelers among the Franks. It was used with some modifications in Rhetia (modern Tyrol) under the title *Lex romana curiensis* and even superseded in Burgundy the *Lex Romana Burgundionum* (*Papianus*) promulgated in 530 A. D. This was all given renewed vigor by the capitularies
(Capitularia Regum Francorum) of the great emperor. North of the Alps and east of the Rhine, however, were peoples whose Folk Laws had passed from traditional utilitarianism into well-defined customs all sufficient for their simple needs, and who looked with suspicion or contempt upon innovations destructive of their sacred principles of paternal government. They had become attached to the soil centuries before and certainly some of them had well-defined rules of civil relations when their sturdy independence and their customs were thought worthy of comment by Cæsar and Tacitus. Throughout the reign of Charles and after, they remained a collection of freemen, making war en masse under elective chiefs, yet individually being allodial landlords whose followings (ancient Gefolgschaften) were attached through a recognized system based upon the "einzellohof" (isolated farmstead), the "gehöhrschaft," or "erbschaft" (cluster of farmsteads), the "hubengemeinde" (body of tenants) and the "erbgenssenschaft" (body of landlords of a particular district).

Nevertheless, forces were set in motion at this period which, while not then resultant, subsequently had much to do with the laws of Europe both public and private. Communication among all the peoples of the continent and consequent knowledge of other customs, laws and institutions were the inevitable results of the work of Charles the Great, whose transportation of the Saxons to the west of the Rhine especially affected that nation by bringing its men in contact with the more advanced Latinized Celts.

It was during the seventy years of conflict among the descendants of Charles, after the Saxons had been permitted to return to their ancient territory, that all the unsubdued sections of the disrupted empire boldly showed their contempt for imperial control and concentrated their forces to re-establish and maintain their earlier independence. The former system of combining the dependents of freemen was almost obliterated and replaced by arbitrary chieftainship. Military followings were increased, many freemen of small holdings were obliged to surrender their estates with the appurtenant serf villages to more powerful landlords in exchange for protection, and in some instances slave
villages became strong enough to dispossess their chiefs and maintain freedom as communities. This centralization was the beginning of the feudal system. The assumption of absolute power by the lords-paramount, the introduction of conditional estates and the rule of the indivisibility of the landed inheritances were but successive links in the chain binding vassal to baron. Founded by might, sophistry and force made it right.

Ambition in time led the feudal lords not only to maintain sovereignty over the soil and people where their word was law and their judgment final, but to covet the territories of their neighbors. Boundary disputes were made pretexts for waging unending private wars with conquest as the real aim. Europe within a century after the decease of Charles the Great became the property of a few powerful nobles, who by sheer arrogance, pretended grant or tradition assumed the titles of king, duke, marquis or count as their ambition made desirable and their power made possible. By such steps arose the right or power to elect an imperial head for the German peoples and the contradictory reservation by the nobles of full sovereignty over their several territories. That dual system proved the bane of "The Holy Roman Empire of the German Nation" and made national cohesion and force impossible. For centuries the struggle among the strong German feudal lords first to secure and then to maintain the imperial election was a mere matter of territory, warriors and intrigue. The attempt to limit the imperial authority to the emperor's own personal domain and the conquered territory gave rise to those never-ending conflicts that produced the gloom from Charles the Great (814 A. D.) to Maximilian I. (1493 A. D.), so important to the student of the law of Germany. True it is that other forces were active, particularly the aggressive domination secured at times and irregularly maintained by the popes and also the Hungarian assault upon Germany, but mainly the period is marked by the conflicting exertions of the emperors on the one hand to rule over a de facto united empire and on the other of persistent efforts of the feudal lords to permit an empire to exist in name only.

Amid these unsettled greater political conditions, other
events were transpiring and contributing to the growth of the later private law. In the endeavor of the nobles to increase their power, both defensive and offensive, by the command of wealth and men and at the same time to preserve tranquillity in their own possessions, they founded new communities, granted freedom to cities, privileges to villages and hereditary advantages to tenants. The emperors did likewise in their private principalities and also in the imperial fiefs. It was in this way that Henry, Duke of Franconia (Henry the Fowler), after his election as emperor, came to be known as the founder of cities. The Church also ever persistent to gain and hold secular influence, used all the strength incidental to its monopoly of learning and its moral control of individuals to acquire free tenures and special privileges. Not the weakest of its contentions was that which declared the emperor to be but the representative of the pope. The earlier emperors accepted this doctrine not only because of the great Church power in Italy but also because of the traditional force of the extraordinary forgery known as the “Donation of Constantine.” A papal crowning, therefore, became the desideratum and moral support of every emperor of the west. It was to him as well as to Christendom a recognition of his headship of the “Holy Roman Empire.” This gave the Church a tremendous force in political affairs. So early as the ninth century tithes had been established and bishops and abbots became as much parts of the government as dukes and counts. The later emperors did not withdraw nor curtail these privileges and the lesser lords also recognized their usefulness as a controlling power within their own estates and as a weapon to use against the emperor. The activity of the Church as northern Germany became accessible is shown by the founding of a Benedictine convent in 937 A. D. at Magdeburg, the year after Otto I. began his reign. The encouragement of letters by the Church appears also by the biography of Archbishop Bruno, written by Ruotger, a Cologne cleric of the tenth century, containing much important history of the early empire. The rapid attainment of temporal power by the popes and its abiding strength, as well as the centralization and force of the feudal system are shown by the edict of Otto III., confirmed by
Pope Gregory V. in 996 A. D., whereby the right to elect emperors was settled upon the seven Great Electors, the Archbishop of Mentz, the Archbishop of Cologne, the Archbishop of Treves, the King of Bohemia, the Duke of Saxony, the Marquis of Brandenburg and the Count Palatine of the Rhine.

While the greater princes and the popes were endeavoring to control or influence the affairs of the empire, the lesser nobles, too weak to secure recognition as electors, were struggling either to enlarge their territories or to preserve themselves from obliteration at the hands of their dependents, or their neighbors or through annexation to the imperial territory. Private war was almost continuous. These antagonistic political currents, supported by personal ambition and the feudal system are responsible for the practical abandonment of all regularity in laws and judicial procedure, even to that extent to which they had been formalized and preserved by the early emperors. All of the science of law that had been developed north of the Alps drifted into oblivion and was succeeded by time-serving measures of absolutism. The field was open for any system that would accord with the feudal customary laws. The religious side of the imperial power and consequent communication with Italy naturally opened the way and called for the Roman law and the Canon law, both of which had already undergone a definite modification in southern Europe. In Lombardy and Franconia there had long been a disposition to so interpret or construe the text of the former as to make it conform, where possible, to the existing Germanic customary laws. Indeed this work so far progressed that in 1070 A. D. the Expositio or commentary on the Liber Papiensis was prepared. Its provisions show that the Roman law had become even then practically Germanized. The Canon law based on the Theodosian Code (379 A. D.) and Civil Law maxims and traditions, had in the ninth century assumed a new form through the collection of Dionysius, known as Codex Canonum, which acquired wide authority through comment and interpretation according to the utilitarian measures and purposes of the Church until the preparation of the Decretum Gratiani about 1140 A. D., contain-
ing all the canons issued up to that time, together with the "dicta Gratiani," in which he scientifically endeavors to harmonize the different canons. This work became the great fountain of Canon law. Persistent efforts were made to introduce it in different localities, but without special results until the clergy had secured the recognition of ecclesiastic tribunals and immunity from secular jurisdiction. Landholding, of course, enabled the church nobles to adopt it in full and to maintain ecclesiastic courts to the exclusion of the civil jurisdiction through specious arguments of the clergy to show that all disputes really involved, directly or incidentally, some spiritual question. Procedure in the ecclesiastic courts was more definite, trials had more solemnity and the principles enforced contained more equity than those enforced in the rude baronial tribunals. However, while many districts partially yielded as to both substance and form and almost all adopted some of the principles and procedure, the Church was not strong enough to enforce general acceptance of her exclusive jurisdiction or universal adoption of the body of her laws.

Contact with Italy at first resulted in confusion rather than in order. The various German states had "particular" customary laws, and a sort of judicial system entrenched behind the bulwarks of feudalism. The mi-Canon, mi-Roman law of the empire, where not absolutely repugnant to established customs controlled in imperial cities and territories and also to some extent in the personal state of the ruling emperor, although in case of partial conflict between the ancient and the modern law the former prevailed in substance but was applied through the procedure of the latter. The adoption and enforcement of the modified or Germanized Roman law by the Lombards and Franconians, two peoples whose power and generally advanced condition rendered them conspicuous and known, had a most potent effect, but not immediately. The nobles resisted any imperial laws that invaded their sovereignty and rendered null any attempt of the Imperial Diets to introduce local reforms. They preferred to borrow of their neighbors jurisprudence that might be adapted to their needs rather than accept the dictates of a power they mistrusted and zealously watched. The imperial authority,
not wise enough to sacrifice the influence of Italy to the unity of the north, could not enforce obedience and had to submit. "Endeavoring to keep their hold upon Italy, Otto and his successors failed to make good, once and for all, their hold upon Germany. They fell between two stools." (Woodrow Wilson, "The State," p. 231.) Therefore, while the imperial acts are rich in provisions for the public peace, procedure, repression of crimes, etc., they are almost absolutely mute on purely private law. (Lehr, "Droit Germanique.")

Into what form this complex system might have become moulded if left to normal processes cannot now be known, for with the latter half of the eleventh century came the ecstatic preaching of Peter the Hermit and the beginning of the two hundred years of the Crusades. While the greatest benefits to the world from these pilgrimage warfares came afterwards there were also immediate results that were far from harmful. The Church, believing the movement to be a divine opportunity for controlling Christendom, offered bountiful inducements to the reigning princes and inferior nobles. Privileges of the clergy were conferred, such as subjection to only ecclesiastic courts, honors were promised, Church Knighthood was inaugurated and emblazoned accoutrements sanctioned. Men and money were necessary and the nobles forgot their quarrels to become peaceful rivals in securing followers and equipment. In consideration of money or men cities were enfranchised, villages granted concessions, slaves freed, monopolies created, artisans given the rank of citizens, truces declared where private warfare had been waging and industries encouraged. Munificent substantial provisions were made by emperor, pope and princes. Interest on loans was remitted, land was permitted to be alienated and freedom from taxes assured. These incidents were not immediate but marked the successive measures adopted during the period when all Europe forgot their own affairs and turned towards the Orient. The world awoke: men traveled, communicated with hitherto unknown peoples, opportunities created new needs, commerce received definite impetus, distant marts were opened, new commodities created, improved transportation became necessary, wider intel-
lectual conceptions arose, knowledge became power, education appeared more important, luxury attracted attention, art revived. The better qualities developed a higher plane of humanity and broke the chain of superstition.

Long before the strife between Christian and Mussulman had ceased the beneficent results began to appear, first in southern Europe and then gradually toward the Baltic and the North Seas. While commerce was becoming established and enriching the cities general educational advancement began to thrive apart from the Church. New ideas, new scholars, new institutions, new laws and new views of old laws were manifested throughout Europe. It was natural that these developments should begin near Rome, where they were rather a revival than a beginning. The work of the Lombard jurists in completing the *Expositio* already referred to, by which the principles of the *Corpus juris civilis* were "interpreted" and "commented" into harmony with the edicts and capitularies of the Kings of Lombardy and Franconia, including much of the Germanic customary laws attracted the attention of other scholars. At the ancient University of Bologna about 1100 A. D. Irnerius founded his School of Glossators, who by the exegetic method sought to make the pure Roman law a living law, applicable to institutions firmly established but bound by tradition. Their labors were spent mainly upon the *Corpus juris civilis*, for the Roman criminal law had already been started upon its mission of moulding procedure and the criminal law through the *Corpus juris canonici*. The subsequent leaders of the Glossators were Martinus, Bulgarus, Jacobus and Hugo up to the end of the twelfth century. Azro, Accursius and Odofredus followed but the special work of the school is considered as summed up in the *Glossa ordinaria* of Accursius, completed in 1250 A. D. Their labors upon the *Digest* were the greatest and produced the most lasting effects. They brought out the full significance of its principles and thus revealed the Roman law as a great whole. However, the results were at first theoretical rather than practical: "The law of the *Corpus juris* had to undergo a process of modification and adaptation before it could be actually applied in the courts and resume the commanding position in the civilized
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world that had once belonged to it: ancient Roman law had to be suited to the altered conditions of the mediæval life.” (Sohm, “Institutes”). Indeed, in Italy itself, there was no material effect upon private law till near the end of the thirteenth century and it was much later that the states north of the Alps were seriously affected. Nevertheless, the period is marked by both a general movement affecting private law and a clear recognition of the three distinct systems upheld respectively by the Glossators, the Church and the German nobles, as yet unamalgamated outside of Lombardy and Franconia. There arose at the same time a fourth system, if it be entitled to classification, viz: the body of those “particular” regulations adopted by many free cities. One of the earliest is that of Das Lübische Recht adopted by the imperial free city of Lubeck in 1158 A. D. In 1160 A. D. a complete system of feudal law, in imitation of the Roman Code was prepared by two Milanese lawyers, showing the trend of thought and need of reform. About the same time Gratian issued his Decretum of the Canon law. The “dicta” accompanying this work offered to the customary laws the same opportunities for coalescence as did the “interpretations” of the Glossators. This was particularly so as to procedure because Gratian gave special force to the collection of regulations known as the “Assizes of Jerusalem” promulgated in 1099 A. D. for the Crusades. That the Canonists were a real power in the empire was evinced by Frederick Barbarossa in 1172 A. D., when he granted to the Monastery of Altenberg “judicium non tantum sanguinolentis plagae, sed vitae et mortis” and prohibited all interference by civil judges.

While these antagonistic systems were interlacing yet struggling for independent support, the thirteenth century opened and brought the definite, tangible results of the Crusades. The spirit of advancement assumed a hitherto unknown force. The older free cities increased in wealth and strength. Villages became cities with autonomous powers. The posts and factories established to promote trade became communities of importance. The Hanseatic League was formed and spread its mercantile and political tentacles throughout Europe. Educational institutions were awarded more consideration and learning regained its in-
herent dignity and its place in state affairs. All Europe seemed to suddenly realize the necessity for exact laws. The *Magistrate* (municipal councils) of the free cities, the lesser barons and finally the controlling princes were equally affected by the ruling spirit. This is the period of the establishment of the first principles of the early common law of Germany as distinguishable from the later or real common law. It is noticeable that its expansion coincided with the political divisions then existing and that it was distinguished by particularism,—that is to say: in the same realm or principality, separate territories, villages and even castes were subject to a diversity and even a contrariety of laws as well as of tribunals, all traceable, however, to an earlier common condition. It was essentially a “feudal common law.” There were cities whose laws and courts were copied by neighboring cities, whereby circles were formed in which the tribunal of the original city was appealed to in last resort. The trend was towards certainty, and the various works indicate this motive rather than any intent to reform principles. Also, it must not be overlooked that this revival of the written law was accompanied by a change from the Latin to the German language, for the thirteenth century marks the passing of literature from the monasteries to the castles and from the exclusive to the general tongue. That the laws bore the impress of this change was prophetic.

Among the most important manifestations of this new spirit was a compilation called *The Mirror of Saxony* (*Sachsenspiegel*), prepared about 1230 A. D. by the Chevalier Eike of Repkow, an alderman of the earldom of Billingshohe, who after first writing a part in Latin completed the remainder in low Saxon. It preserved in systematic and practical form the ancient juristic principles and methods and announced opposition to innovations. It was divided into *Landrecht* and *Lehnrecht* and contained little that was not Germanic in its origin although some writers claim that many passages show the work of a mind trained in the Roman law (*Deutsche Rechtsgeschichte: Zoepfl.*) It recognized the superior force of local over general customs. Some of its sections aroused the antagonism of the clergy who had it condemned by Gregory IX. in a vigorous bull.
This was soon followed in southern Germany by the 
Spiegel der deutschen Leute, which, while following the 
Sachenspiegel as model, claimed to be an exposition not of 
the law of one people but the general principles of the law 
of Germany. This work, however, was soon effaced by the 
celebrated Kaiserliche Land- und Lehnrechtsbuch that ap-
peared in Augsburg about 1280 A. D., under the title of 
Schwabenspiegel (Mirror of Souabe), which contained all 
the matters of the first Mirror but by comment, interpretation 
and actual modification of text was made to harmonize with 
the customs of southern Germany. It also contained many 
provisions borrowed from the Justinian collection, former 
laws of the empire, city statutes, and even the Bible. The in-
fluence of these two Mirrors was widespread, almost imme-
diate and lasting. They were both translated into Latin, the 
former also into Flemish and Polish and the latter into 
French and Russian. Within fifty years many glosses of both 
appeared and they also served as bases for those theoretical 
treatises on German law (Rechtsbücher), which largely pre-
pared the way for amalgamation with the Roman law as 
modernized by the Lombards and Franconians and inter-
preted by the Bologna school. While the kings and dukes 
were intent upon their own codes the smaller nobles were 
equally active in according charters of privileges and issuing 
ordinances. Among these were the Handfeste of Culm, in 
1233 A. D., and the Landesordnung of Salzburg, in 1328 
A. D. The free cities also kept pace with their Stadtrechte, 
which were well defined codes in Augsburg, Quedlimburg, 
Cologne, Magdeburg, Lubeck and Hamburg, as well as in 
most all of the other cities included in the Hanseatic League. 
That of Cologne had the distinction of being the Mutter-
recht for seventy-two cities. Even Vienna had its Wiener 
Weichbildbuch in the twelfth century. These urban laws 
were looked upon as highly developed legislation and, prob-
ably because of the power of the League, attracted the 
German glossators. The law of Magdeburg, called Sach-
sisches Weichbild, received special scholarly consideration, 
being translated into Latin, Polish and Russian and anno-
tated from the standpoint of Roman and Canon law.

In all this legislation affecting private law it was impos-
sible to exclude principles of the Roman law at a time when theology and jurisprudence were the most prominent sciences and the revival of letters generally was so rapidly progressing. In one instance it was clearly shown: the Kleine Kaiserrecht, written about 1300 A. D., provided for Franconia a complete system of common law founded upon those laws and capitularies by which Charles the Great had sought to lodge many principles of the Roman Law among the customs of his peoples.

The greatest impetus towards blending the two great systems, however, arose from the successors of the great Glossators known as the Commentators and was first felt in Italian jurisprudence. The seats of the work were Perugia, Padua and Pavia and the ablest of the men were Cinus, Bartolus and Baldus, who moulded the work into final practical form in the fourteenth century. Taking the elucidations of the Glossators, the statute laws of the cities, the Canon law and the Lombard law they succeeded in producing a sort of usus modernus Pandectarum, which came to be applied in the Italian courts. This result was promoted largely by the fact that French scholasticism made a deep impression upon Cinus while he spent some years at the University of Paris and which his return to Italy enabled him to communicate to Bartolus, his pupil. The victory of the scholastic mode of thought was complete in France when Abelard died in 1142 A. D. and Paris, in the middle of the thirteenth century, became the centre of the new school of scientific treatment of jurisprudence. It was an incident of the general revival of learning. The monastic schools lost their monopoly of education in the upheaval of the Crusades and, while the Teutons had been unable to boast of any notable seats of learning prior to that era, before the end of the fifteenth century nine universities were founded upon their territory. Their location and time of establishment reveal the rapidity and extent of the revival: Heidelberg, 1386; Wurzburg, 1403; Leipsic, 1409; Rostock, 1419; Louvain, 1425; Greifswald, 1456; Freiburg, 1457; Basel, 1460; Ingolstadt, 1472; Tubingen, 1477; Copenhagen, 1478. The world no longer looked to Italy as the chief resort of intellectual effort. Knowledge of the Glos-
sators and their work was no longer confined to the south of Europe. The Post Glossators or Commentators received the greatest recognition at the older universities, but their scholastic methods were pursued by less-known but equally as earnest thinkers and writers, thus opening the way for practical results. By considering particular sections, bringing order into the mass of glosses and directing their attention not only to the Pandects but also to the Canons, statute and customary laws with the aim of reducing the whole to fundamental principles the Commentators and their followers during the fourteenth and fifteenth centuries produced what was sometimes termed a "jurisprudence of abstract conceptions," but which was really the law of the Pandects in that practical form which eventually received recognition in every part of Europe. The production of the results viewed as a system must be ascribed to Baldus, whose fifth centenary was recently celebrated at the ancient University of Perugia, where he devoted the most of his eighty years of life to teaching that the true principles of Roman law were consistent with the true principles of customary law and best administered through the equitable procedure of the Canon law as "glossed" into accord with the practical jurisprudence of the day. (L'Opera di Baldo, per cura dell' Universita di Perugia ne' V. centenario dalla Morte del grande giureconsulto. Perugia, 1901.)

The political events of the period following the Crusades in respect of both the Holy Roman Empire and the sovereign princes opened a wider field for the practical form of Roman law that was in process of formation at the hands of the Commentators. The balance of power between the representatives of this dual system of government was materially affected in 1376 A.D., when Charles IV. offered the three ecclesiastic electors and the Count Palatine one hundred thousand crowns to have his son Wenceslaus chosen King of Italy. He could not raise the money and in lieu thereof paid his debt by transferring all the imperial domains on the Rhine with their tolls and taxes. This was a fatal blow to the authority of the empire as then constituted. The electors thus secured the balance of power in territory, men and wealth against both the empire and the combined lesser
sovereigns. The contentions between the electors then began and the struggles of Gunther of Schwartzburg against Charles IV., and the pretensions and misfortunes of Wenzel of Luxemburg, Rupert of the Palatine, Sigismund of Luxemburg, Jobst of Moravia, Albert II., and Frederick III. of Austria so involved and modified territorial boundaries that at last a reaction enabled Maximilian I. in 1493 A. D. to reassert the imperial power with the support of a practically united nobility. There is little doubt that much of this strife was due to the aggressive acts of the Church through the clerical imperial electors. With her increase in temporal power, exercised through absolute ownership of great cities and fiefs and supported by uncounted wealth, corrupt practices in ecclesiastical as well as in state affairs were preparing the way for her great misfortunes. Maximilian, really the founder of the political power of the house of Hapsburg, united in his own person the rule of those vast sections of Germany which had been divided among his collateral lines as well as the large domains secured by his marriage with Mary of Burgundy. Resting his imperial authority more upon these material conditions than upon the favors of the pope and bent on advancing the interests of Austria as a Pan-Germanic domination rather than on maintaining the shadowy substance of the imperial institution, he took the title and inaugurated a new era for the Teutonic peoples. As the Ottos had Teutonized the Roman Empire of the West, so did Maximilian Austrianize the German-Roman Empire. "Here, indeed, the history of the Holy Empire might close, did not the title unchanged beckon us on, and were it not that the events of these later centuries may in their causes be traced back to times when the name of Roman was not wholly a mockery." (Bryce, *The Holy Roman Empire*)

His accession seemed the culminating point and conjunction of many influences that had been separately but progressively advancing during centuries. The struggles between the emperors and the popes now settled into a recognized division of spiritual and temporal authority. The pope became the recognized head of the German church and through the "spiritual wisdom" of his three Rhenish electors, his
prince-bishops and his abbots, assisted the four temporal electors, the dukes, the counts and the margraves to promote the cohesion and force of the empire. Maximilian was not crowned at Rome nor was any of his successors. He added to the simple "sacrum imperium Romanum" of his predecessors "Nationis Teutonicae."

This adjustment between Church and State was only one of the many indications that divergent influences were coalescing for the breaking forth of a new light and the commencement of a new epoch. The invention of printing, the manufacture of paper, the increase of wealth, the greater attention to general education, the use of gunpowder, the substitution of regular troops for the feudal militia and the first waves of the Renaissance that, following the reawakening of the intellect, revived the art and poetry of Greece and ancient Rome, all seemed to meet at last for united progress. The forces were assembled: the time for results was at hand. Not least among the formative elements were the changes that had already gradually happened in the growth and administration of private law, resulting from the work of the Commentators and university training. In the imperial domains the unlettered judges were replaced by men of the universities where the Pandect law of the Glossators and the Commentators had become an exact science through the cult of scholasticism. The princes and lower nobility in the jealous preservation of their local laws were unable to avoid the wider influence of learning and yielded almost imperceptibly to the force of reason and analogy brought into their baronial courts by men of education.

Tradition and scholasticism thus stood vis-à-vis with advantages by no means equal. So much had happened to the former that it could not endure the brilliancy of the latter. This was the situation when Maximilian succeeded in establishing the new Imperial Diet, and the Court of the Imperial Chamber (Reichskammergericht) came into existence in 1495 A. D. It originally consisted of a nobleman of the first order appointed by the emperor, who acted as president, and sixteen judges chosen partly by the emperor and partly by the states and cities. It was first established at Frankfurt-on-the-Main, but was subsequently removed to Spiers.
It was a monumental event for German law. The ordinance regulating the administration of justice in this new court provided that the judges and assessors should "adjudicate in accordance with the common law of the empire, and likewise in accordance with such ordinances, statutes and customs of the principalities, seignories, and courts as are brought before it and are equitable, proper and tolerable." The "common law of the empire" was the Roman law as already shaped by the Commentators and by this ordinance was received "in complexu," that is, was in force except where the contrary was proved. The words "as brought before it" made it necessary to actually prove all other laws. This was the beginning of the reception of the Roman law in Germany. It was, however, not fully accepted for nearly two centuries thereafter and indeed never got beyond the precept: "City law breaks territorial law, territorial law breaks common law." Considering the vast region then controlled by the emperor and that the Imperial Diet was composed of three colleges, the electors, the princes and the free cities, the erection of this great court seemed much like the will and voice of all Germany. There were defects, however, that weakened its power as to private law. The lower nobility and the knights of the empire were excluded and resisted any encroachments upon their baronial sovereignty as they had always done. Indeed, the very members of the Diet recognized the imperial powers only so far as they did not infringe upon the despotic remnants of the feudal system in the several states. This might have nullified the effect of the reception of the Roman law had it not been that the intellectual spirit of the age caused even the smaller barons to invoke the assistance of trained jurists (Spruchcollegien). These men were all taught the Roman law and had imbibed the principles of the Commentators, whose work was of undisputed weight in all the law schools of Europe. Local ordinances, statutes and procedure were affected and the influence of the Imperial Court of Justice became constantly more apparent as disputes reached it on appeal. The necessity for accord enabled the jurists to attain it in the inferior tribunals by showing the defects of the local statutes and the customary laws and resorting to the Pandect law as subsidiary.
The advent of Charles V. and the beginning of the Reformation advanced the acceptance of the Pandect law, although as incidental to political and educational conditions rather than from any determined effort. The foundations for a comparatively united Germany laid by Maximilian were enlarged and built upon by Charles V., but its weak points were rendered weaker by the prominence given to the papal sphere of influence. The importance he attached to the crowning by the pope signaled the Catholic Church as the cornerstone of the imperial structure. This policy ignored the debasing practices of the Church that had already turned the minds of men towards reform. After Luther had announced his doctrine and the Diet of Spiers in 1526 A. D. had developed a Protestant party too strong for the Catholics to risk a decree against it, the supports of the Holy Roman Empire began to crumble into dust. All the glorious, vast and powerful governmental structure of Charles V. was not sufficient to enable him to keep his agreement to extirpate the Protestants made with Pope Clement VIII. when the latter crowned him at Bologna in 1530 A. D. The Reformation sped on and every successful step was an ominous blow at the rock of sanctity to which he had again attached the empire. If the imperial institution were really dependent upon the world as a united Catholic state and could not exist without the support of the Apostolic See, then indeed its fate was sealed when some of its mightiest princes declared their Protestantism and independence.

Thus when the ancient empire appeared to be most firmly re-established under the masterful forces of the house of Hapsburg, the greatest calamity of the centuries came upon it, mainly because its chief reliance was upon papal primacy in temporal affairs. Politically, Germany was torn asunder and the states became aggressive independent sovereignies in a more exact sense than ever before. "The great religious schism became a source of political disunion far more serious and permanent than any that had existed before, and it taught the two factions into which Germany was henceforth divided, to regard each other with feelings more bitter than those of hostile nations." (Bryce, *Holy Roman Empire.*) In the north the princes and the people were mostly Protes-
tants, while in the south and particularly in the southeast few Lutherans could be found except in some of the free cities.

Under Maximilian the Roman law was recognized and embraced; under Charles V. the reaction eradicated the Canon law and almost effaced the work of the Glossators. Customary law again asserted itself.

The subsequent history of the empire is practically that of the rulers of Austria. Having been the means of engrafting the Roman law upon the early Germanic common law through the evolution of Pandect law, its mission ended from the standpoint of legal history. On the other hand the subsequent political history of the various states and cities is of importance because private law was affected by the modification of territorial boundaries resulting from the continuous wars among the states and the leagues formed to fight the Hapsburgs or settle religious differences. They were made memorable by seizures of Catholic domains and the efforts of the rival princes to enlarge their states at the expense of one another. The attempt to obtain peace by the recognition of the Lutherans at the Diet of Augsburg in 1555 A. D. inaugurated a hostility that ended only after the terrible havoc of the Thirty Years' War, when the Peace of Westphalia, in 1648 A. D., settled all doubts as to the sovereignty of the princes, confirmed religious freedom, recognized the independence of Holland and Switzerland and gave definite boundaries to the warring Germanic states.

The struggle, however, had been too general and too destructive not to more fully enthral the common people. Trade had been ruined and not only the Hanse towns, whose league last met in 1630 A. D., but the poorer nobles also were impoverished. The positive sovereign entity given by the treaty to the free cities and divers large and small states, thus confirming absolute autonomy, became operative amid arrogant penniless lords and a crushed populace. An aggregation of nearly four hundred sovereignties was created with power of treaty, arms, coinage, customs and tolls, separate judicial systems, particular public and private laws ruled by boastful potentates surrounded by proud but unpaid households. This great peace signaled a recession. The
feudal substratum reappeared and for more than a century
the grand and petty rulers trampled upon their people and
neglected all beneficial rules of private relations. They in-
differently accepted the German Pandect law as the com-
mon law of Germany, except when it conflicted with their
particular laws, which became more systemless and utili-
tarian than ever before. After a period a partial reaction
brought a revival of the feudal background that in scattered
sections progressed towards a distinct development of what
was known as “particular jurisprudence” (*Gerichtsge-
brauch*), that is, the customary law as settled by judicial
decisions. Owing to the divers changes in boundaries some-
times a principle of the Gerichtsgebrauch or a statute would
be in force only in a single city. Again, another controlled in
a single province or a whole state and often a single statute
would be recognized in portions only of two or more states.
This partial return to the ancient indigenous laws was by no
means sudden or general. Indeed; by its failure to control
procedure its force was impaired and it was unable to check
the advance of the modified Roman law as an administrative
agency. Before the end of the seventeenth century had been
reached even the lowest ancient courts in Germany (*Schöffen-
gerichte*) were replaced with trained jurists (*Amtmänner*),
who paraded the Roman law but enforced extempore legal
principles deduced from all the juristic and feudal sources
which the chaotic conditions made possible.

Inherently impossible as a continuing state, this “mood of
jurisprudence” was disturbed by the rise of the school of
“natural law,” which during the whole of the eighteenth
century battled for recognition. This school was closely
identified with the German writers upon theology and ab-
stract philosophy, who became prominent after the Reforma-
tion. Indeed, throughout the Middle Ages all sciences, in-
cluding jurisprudence and history, were more or less hand-in-
hand with theology. Even through the seventeenth and
eighteenth centuries the German universities adhered to the-
ology as fundamental in all sciences and higher scholarship.

The new school of “natural law” had no centre, but after
receiving recognition in Holland through the works of Hugo
Grotius, William Grotius and Conringius, extended its influ-
ence to Germany, where Puffendorf became its principal exponent. By the middle of the eighteenth century it had received wide approval as a doctrine as a result of the later writings of Liebnitz, Wolf and Heinecke (Heinecius) in Germany, Fleury and Pothier in France, Bynkershock in Holland, and Muratori in Italy, although these several writers differed in the development and application of their theories. Whether the decline of the Pandect law was owing to the decay of its early and continued sponsor, the empire, the increased centralization and absolutism of the sovereign princes and lesser nobles following the Peace of Westphalia or the influence of the "natural law" school cannot be definitely determined owing to the vast country involved and the evident irregularity of progress. Probably all of these three elements contributed to the revival of the ancient indigenous laws and the later legislative modifications based thereon. Certain it is that from the eighteenth century onward German universities taught as a distinct branch "German Private Law" (Deutsches Privatrecht) as well as the "Law of the Pandects," both being necessary to cover the subject of private law in Germany. The former embraced the indigenous parts of the common law, even those subjects that while in no wise a part of had been attached to the Roman law at its "reception," such as charges on land (Reallasten) and agreements concerning the institution of an heir (Erbvertrage), the feudal law of the Lombards, likewise "received," and also those "particular laws" in force before the "reception" and such as were subsequently adopted. The latter was the science of the common law of Germany of Roman origin. "Of the two branches, the law of the Pandects was the older, the larger and the more powerful. But the younger branch grew steadily in importance: inwardly it became less and less dependent on its older rival, and as a result its outward power increased, so that it gradually became the stronghold of national legal ideas as against the claims of the foreign ideas imported from Roman law." (Sohm, "Institutes") With the development of the scientific side of the "German Private Law," as understood today, must always be associated the work and names of those great jurisconsults so familiar to the German lawyer: Mit-
termayer, Eichhorn, Muhlenbruch, Boehmer, Gluck and Bluntschli.

While the “natural school” was entrenching itself, the various states again awoke to the necessity of precising their private law. What effect was possible appears with startling reality, when it is recalled that towards the end of the eighteenth century Germany consisted of about eighteen hundred separate sovereign states, principalities, cities and signories. It is true that less than four hundred had any appreciable territory and that only about one hundred had even a history. Still, there were those independent unfettered powers for the making or undoing of laws,—customary, feudal, Roman or Canonical.

The resulting complexity can be appreciated by considering for a moment the legislation of a few states, bearing in mind the almost uninterrupted military activity and the territorial modifications arising from conquest, inheritance, secularization, annexation and exchange. The uncertainty of boundaries did not seem to interfere with the making of laws, but the consequences of promulgating one day a law for a province that the next day became subject to the laws of another sovereign prince can well be realized.

The following minor laws became operative: In 1700, a crude Landrecht for the Palatinate of the Rhine; in 1734 and 1758, ordinances affecting inheritance between husband and wife, for the suburban communes of Frankfort-on-the-Main; in 1742, the Landesordnung; in 1767, the ordinance on absence; and in 1785, the ordinance on guardianship for the Duchy of Saxe-Altenbourg; in 1751, the ordinance on marriage for Reuss (elder branch); in 1741, the supplemental interpretations of the “constitutions” of 1572, of the Saxon Elector Augustus, for the Duchy of Anhalt; in 1755, the Landrecht for Mayence in the Grand Duchy of Hesse; in 1756, the Kundige Rulle for the free city of Bremen; in 1756, the Bayrische Landrecht for Bavaria; in 1767, the law on absence; in 1769, the law on successions, and in 1774, the law on promises of marriage, for the principality of Schwarzbourg-Rudolstadt; in 1771, the law on guardianship of minors for Mecklenburg-Schwerin; in 1771, the law on mortgages, and in 1794, on prescription for the prin-
The German Civil Code. The civil code of Lippe; in 1775, the revised Stadtrecht of 1554 for Wimpfen, in the Grand Duchy of Hesse; and in 1779, the law on absence for Mecklenburg-Strelitz.

All of this legislation is known under the name of "particular" laws and no state attempted any important comprehensive and orderly collection of all its private laws until Prussian jurists took up the question. The efforts of the "Great Elector" of Brandenburg and his successors to dominate the Teutonic peoples had largely succeeded and it seemed practically if not historically fitting for that state to take the lead. Her people represented the most definite national advancement. They were conspicuous for unusual energy, born probably of the mixture of Fins, Slavs, Germans and French, which once prompted a Frenchman to say: "Les Prussiens ne sont ni des Allemands, ni des Slavs: ils sont Prussiens." After several fruitless experiments such as the preparation of the Corpus juris Friderici by the Chancellor Cocceji under Frederick the Great, in 1747, and the rejection of it for a general code made up of the various provincial laws which was disapproved in its turn, the Allgemeine Landrecht für die Preussischen Staaten was promulgated in 1794 as a general law for all the Prussian states and provinces, to be enforced whenever local customs to the contrary were not shown. The unsuccessful efforts to frame a code indicate a wavering of jurists between a modified natural school and the distinctly Germanic scholasticism that ultimately controlled. Cocceji was a learned man, a statesman and a jurist, but that he endeavored to combine the principles of the Commentators with those of the subsequent "natural law" writers is manifest from his private works: Elementa Jurisprudentiae Naturalis et Romana (1740); Systema Novum Jurisprudentiae Naturalis et Romana (1748). As was to be expected his code was written in Latin. Its rejection and the subsequent compression of fundamental common law into a modernized and practical form as the Landrecht was an adumbration of that spirit of Teutonic nationality which was soon to become a concrete factor in European politics.

It is a striking fact that the next work of codification affecting German law occurred upon foreign soil.
The Code Napoléon, adopted in 1804, became in 1807 the law of the land in Alsace-Lorraine, Baden, that part of Bavaria known as the Palatinate of the Rhine, that part of the Grand Duchy of Hesse known as the Province of the Rhine and in the Prussian provinces of Posen, Rhenish Prussia and Westphalia. The original text prevailed in all except Baden, where it was translated into German and promulgated as the *Badische Landrecht*.

After 1815, when Europe, emerged from the military atmosphere of the Napoleonic régime, began to re-establish geographical lines and promote interior tranquillity, the imprints of the French Revolution became luridly visible upon political and social institutions. No state or nation derived more profit from the introspection of this period than Prussia. Two events had happened to promote her leadership in central Europe. In 1806, Austria had recognized the folly of maintaining the sepulchral title of The Holy Germanic Roman Empire and formally renounced it for that of the "Hereditary States of the Crown of Austria." Thus, the phantom of an ignored and practically forgotten bond was laid low and left Germany proper to the leadership of the mightiest or the wisest. Then the sudden necessity for rival states to forget their animosities and coalesce first to resist and afterwards to overthrow Napoleon, proved a Providential concomitant of freedom from Austria. These were the causes which combined to work out the first problems of a national political unity and the sentiment of a common Fatherland.

The formation of the "Germanic Confederation" in 1814 was a logical outcome and its work in the readjustment of affairs would have progressed had not the Hapsburgs envied the growing dominance of Prussia. There is little doubt that notwithstanding the mutual distrust of these two great realms, codification of the private laws would have assumed prominence in the Confederation had not the famous controversy between Thibaut and Savigny left statesmen uncertain and idle between the two theories supported by those jurists, already reputed for high attainments and both widely celebrated. The former as a professor at Heidelberg was the leader of the natural school and urged the adoption of
uniform national laws. The latter, with the prestige of his professorship at Berlin, represented the historical school. He objected to any legislation except it were an elaboration of the pure text of the ancient Roman law. For twenty years this discussion was maintained and although Savigny long upheld his contention he modified his views, and as Minister of Justice, took part from 1842 to 1848 in the revision of the laws of all Prussia. Thibaut practically triumphed, for a sentiment in favor of codification had become general throughout the larger states long before his death in 1840. That this was true appears from the efforts of some principalities to codify where the people were proclaiming against the insufficiency and incoherence of their local laws. Those of the Grand Duchy of Hesse in 1841 and 1853, of Bavaria in 1861 and 1864, of Dresden in 1866, and of the Kingdom of Saxony in 1863, were the most important, but only the last named ever reached the point of promulgation.

A projected civil code was practically completed under the Confederation in 1865, but it would have lacked national sanction because five of the large states took no part in the Diet, which was controlled by Austria. However, the strenuous events of 1865 and 1866 not only prevented its adoption but through the statecraft of Bismarck brought into the field of private law an additional system and smoothed the way for future codification. By the treaty of Prague, Schleswig-Holstein was annexed to Prussia and thus the ancient Jutland laws (*Jydske Lov*), codified by order of King Waldemar II., in 1241 A.D., as modified by the Danes in 1683 A.D., became a part of the “particular” law of Germany. At the same time Austria and her laws became definitely separated from the true German people except as to a small fragment of territory that continued to be governed by the Austrian Civil Code of 1811. The European coalition against Napoleon in 1814, the Austrian war of 1866, and the formation in 1867 of the “Confederation of the North,” under the domination of Prussia must be considered as the important steps toward that sentiment of German nationality which found its full expression when the German Empire was proclaimed July 18, 1871, at Versailles. No more propitious moment could have been chosen.
United Germany by power of conquest held an ancient foe in thrall and the swelling patriotism found in this great act of union a fitting outlet and a satisfaction.

It would have been strange had not the mind that assumed the direction of the new empire recognized the binding force of one system of private law for all the realm. It would have indicated the most stupid ignorance of European history. It was the great cohesive power that no real statesman could have overlooked. No such blunder was to be committed, nor had the contrary long in fact to wait for manifestation. The constitution was sanctioned April 16, 1872. The provisions of Article 4 were enlarged by a Federal law of December 20, 1873, whereby the subject of civil law was placed within the imperial legislative powers. In March, 1874, a commission of five members, named by the Federal Council (Bundesrat) traced under the Presidency of Schelling a plan for preparing a civil code for the whole empire. It was suggested that the sources should be the several codes or collections of laws already in force in the several states, the various particular laws and the customary laws and that a permanent commission of eleven members should be selected to territorially represent the various great systems in force.

In accordance with these recommendations the Bundesrat on July 2, 1874, named the following commission: Papa, president judge of the Supreme Court of the Empire; Johow, counsellor of the Court of Justice of Prussia, and Kurlbaum, counsellor of the Ministry of Justice of Prussia, representing the Prussian Landrecht; Derscheid, counsellor of the Supreme Court of the Empire, representing the French Law; Gebhard, ministerial counsellor of Carlsruhe, representing the Baden Law; de Kübel, president judge of Stuttgart (replaced after his decease by Professor Mandry); Planck, counsellor of the Prussian Court of Appeal; Roth, professor of law at Munich; de Schmidt, president of the Superior Bavarian Court, and Professor Windschied, representing the Common Law, and finally Weber, president of the Superior Saxon Court, representing the Saxon Law.

These men faced the most unique as well as the most intolerable condition of private law that the world had ever seen.
In the centre of Germany was an immense region extending from the central south to the extreme northwest, regulated principally by the common law, that is, the Roman law as "received" into an infinity of ancient local laws and general customs, city statutes, privileges and royal ordinances. To the north were sections governed by the ancient Jutland code, the Roman law and the Saxon particular code. To the eastward extended a vast territory subject to the Prussian Landrecht combined at divers points with or overridden by provincial laws or new limited codifications. At the west was a diversified country, where within short distances the laws changed from Prussian to Roman and from the latter to French. The Roman law governed more than sixteen millions of inhabitants; the Prussian twenty-one millions; the French seven millions; the Badoise two millions; the Danish, Frisonian and Jute four hundred thousand, and the Austrian code of 1811 about three thousand.

In the east the laws were in German, in the centre mostly in Latin, in the west partly in German translations of French and partly in the original French.

Startling anomalies existed. Within a few miles one could find the law of inheritance so different as to give a female no rights in one town, equal rights with other heirs in the next, with heirs of the full and half blood dividing the inheritance in a third town. Here, the law of primogeniture was ancient and unyielding, there it had never existed. Some cities alone had two distinct bodies of private law, one for the ancient precincts within the walls and the other for the newer parts without. (Roth, Deutsches Privatrecht.)

The empire was composed of:

Four kingdoms, Prussia, Bavaria, Saxony and Wurtemburg; six grand duchies, Baden, Hesse, Oldenburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz and Saxe-Weimar-Eisenach; five duchies, Brunswick, Saxe-Meiningen, Saxe-Altenbourg, Saxe-Coburg-Gotha and Anhalt; seven principalities, Schwarzburg-Sonderhausen, Schwarzburg-Rudolstadt, Waldeck-Pyrmont, Reuss (elder branch), Reuss (younger branch), Schaumburg-Lippe and Lippe; three free cities, Lubeck, Bremen and Hamburg; one imperial territory, Alsace-Lorraine.
The entire population numbered about forty-three millions, of which three-fifths were Protestants, one-fifth Catholics and the remainder mostly Jews.

The following list of the states, alphabetically placed, gives the principal sources of private law in each at the time the Commission was formed:


*Anhalt* (duchy): Sachsenspiegel (1230) and Weichbildrecht (1280).

*Baden* (grand duchy): Code Napoleon, as translated into German under the title of Badische Landrecht.


*Bremen* (free city): Statutes of 1433 and the Kundige Rulle (1756).

*Brunswick* (duchy): German Common Law.


*Hesse* (grand duchy): Code Napoleon, divers provincial Landrechte (1582, 1591, 1700, 1755), divers Stadtrechte (1544, 1578, 1775), the Landesordnung of Solms (1571), Canon Law (Bishopric of Fulda) with the Common Law as subsidiary.

*Lippe* (principality): German Common Law.

*Lubeck* (free city): Der Kais. freien Reichsstadt Lubeck statuta und Stadtrecht (1586).

*Mecklenburg-Schwerin* (grand duchy): German Common Law, a great number of Stadtrechte and eight local Hypothekenordnungen.

*Mecklenburg-Strelitz* (grand duchy): In the country, German Common Law; in the cities, the ancient Laws of the Mark of Brandenburg.


*Prussia* (kingdom, with a code and fifteen provinces having independently a diversity of un-abrogated civil laws founded on the Common Law, statutes and ancient Customary Law.): Landrechte (1794), Provinzial-
recht of the Mark of Brandenburg, Sachsenspiegel (1230), Erneuerte und verbesserte Landesordnung of Hohenzollern (1698), German Common Law, divers local Landrechte, the Wendisch-Rugianische Landgebrauch and the Bautersordnung of Pomerania, Ostpreussisches Provinzialrecht (1801), Code Napoleon, Subhastationsordnung (1822) of Rhenish Prussia, Jydske Lov (1241) of Sleswig-Holstein, divers Stadtrechte and an infinity of special laws like that for the regulation of rural property (Landguterordnung) in Westphalia.

Reuss, elder and younger branches (principalities): German Common Law, local statutes and Saxon Common Law (combination of the Sachsenspiegel and the Weichbildrecht of Magdeburg).

Saxony (kingdom): Civil Code of 1863 (founded upon the Sachsenspiegel) and special laws on hereditary leases, fiefs, etc., not abrogated by the Code.

Saxe-Altenburg (duchy): Local laws and customs, Saxon Common Law, German Common Law, Landesordnung (1742), and Ordinances (1767, 1785).

Saxe-Coburg-Gotha (duchy): Landesordnungen of Coburg (1556) and of Gotha (1653).


Saxe-Weimar-Eisenach (grand duchy): Landesordnungen of 1556 and 1589 and Statutes of Cities.

Schaumburg-Lippe (principality): Polizeiordnung of 1615 and German Common Law.

Schwarzburg-Rudolstadt and Schwarzburg-Sondershausen (two principalities): Local laws, Saxon Common Law, German Common Law, Statute of 1767 on absence and Statute of 1769 on successions.

Waldeck-Pyrmont (principality): German Common Law and Statutes of Korbach (1589).

Wurtemberg (kingdom): Landrecht of 1555 as revised in 1567 and 1610.
While the foregoing represent the most important civil law sources, every state had also a mass of special legislation which could not be ignored.

To bring order out of this chaotic product of tribal life, military imperialism, religious imperialism and fanaticism, individual ambition and aggrandizement, chivalry and scholasticism, disunited impotence and aggregated power and finally to reduce it to a systematic unified exemplification of the true principles of private relations consistent with the spirit of national patriotism that called forth the attempt, was the grave undertaking of the Code Commission of 1874.

Within two months after appointment the first session was held September 17, 1874, under the presidency of Chief Justice Pape, and the procedure outlined. The General Part was confided to Gebhard, Obligations to de Kübel, Law of Things to Johow, Law of Family to Planck, and the Law of Succession to de Schmidt. Each specialist was authorized to take an assistant from the magistracy, and was requested not only to prepare a Project of his branch but Motives to support its provisions.

This individual labor was pursued for seven years before the Commission was reunited to consider the results. What had been accomplished may be appreciated by the fact that the Motives alone filled five 8vo volumes containing together 4,200 pages, and constituting the most complete and profound treatise that ever existed upon the whole German civil law. (Motive zu dem Entwurfe eines bürgerlichen Gesetzbuches für das deutsche Reich, 5 vol., Berlin, 1888.)

Upon the reassembling of the Commission in 1881 the discussions began in befitting solemnity and particularity. This prolonged but most important debate continued more than six years, ending in the adoption of the Project of the Code in its entirety, which was transmitted to the Chancellor of the empire on December 27, 1887. He presented it to the Bundesrath, which as a first step decided to lay the whole work before the entire nation.

The Project and the Motives were printed and copies sent throughout the empire to universities, judges and noted scholars for criticism and suggestions. Even the magazines and newspapers were requested to give publicity to individual
communications on the subject. The appeal to the people brought numerous and valuable responses, forming six large volumes, which were printed but not put in circulation. They showed a generally unfavorable opinion of the Code. Some writers complained that it was impracticable, that it was written in technical language that was difficult to understand, and that it was stamped with doctrinarianism. Others found too much Roman law in it, and the socialistic writers charged that it favored capital and oppressed labor. All, however, agreed that it was an admirable and worthy base for subsequent labors. On December 4, 1890, the Bundesrath decided to submit the work to a second body of jurists for revision, and named a new commission of twenty-one members, composed of jurists, economists, leading men in the political parties of the Reichstag, and representatives of commerce, industrial arts and agriculture.

These men began in April, 1891, and completed their task in June, 1895, having made many material changes to mollify or eliminate the severely technical terms and scientific provisions, and to introduce even elements based upon economic or judicial theories still in an experimental stage. There was a distinct rapprochement of scholastic theories and popular ideas.

After consideration by the Bundesrath it was sent to the Reichstag on January 27, 1896, where it was submitted to a general discussion, resulting in that body sending the entire subject to still another commission of twenty-one members, whose report was finally submitted June 11, 1896. (Bericht der Reichstags-Kommission über den Entwurf eines bürgerlichen Gesetzbuchs und Einführungsgesetzes nebst einer Zusammenstellung der Kommissions beschlüsse. Berlin, 1896.)

The final debate upon adoption began June 19 and terminated July 1, 1896, when the Project practically as reported by the last Commission was adopted, and the new Code with a Law of Introduction was promulgated August 18, 1896, to take effect throughout the empire on January 1, 1900.

The Reichstag debates were marked by dignity, lucidity and a patriotism that dispelled all doubts of a unity of the German people. The general interest of the parliamentary representatives appears by the following data:
THE GERMAN CIVIL CODE.

One hundred and twenty-five formal speeches were made, being distributed among the subjects as follows:

Concerning judicial incapacity of habitual drunkards, six; judicial personality of intellectual or social associations, eight; nullity of juridic acts contrary to law or morals, eight; responsibility for damages caused by animals, twelve; responsibility of possessors of rights of chase for damages caused by game, thirty; responsibility of officials, eight; civil marriage, fourteen; parental consent to marriage, nine; divorce for insanity, eleven; paternal powers, nine; olographic wills, ten.

At last this stupendous undertaking was finished, and, despite its imperfections, two years of experience have won for it the approval of the nation and for its compilers the gratitude of the House of Hohenzollern, whose energy and foresight not only wrought the union of a disintegrated people, but whose living representative will leave this Code as the great civic monument of his reign.

William W. Smithers.