



**Universität
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Introduction to Swiss Civil Law

The History of the Swiss Civil Code

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Overview of the Lecture

- Historical context / Political circumstances
- Civil codes of the cantons
- Jurisprudence in Switzerland
- The period of codifications:
 - Code of Obligations
 - Swiss Civil Code
- Structure and System of the Swiss Civil Code
- Reception of the Swiss Civil Code



Historical Context

- From 1291: Old Swiss Confederacy
- 1798-1803: Helvetic Republic
- 1803: Napoleons Act of Mediation
- 1814-1815: Vienna Congress
- 1815: Federal Treaty of 22 Cantons
- 1847: „Sonderbundskrieg“ Civil war
- 1848: First Federal Constitution
- 1874 und 1999: Total revision of the Federal Constitution



Civil Codes of the Cantons

- 1798: First attempt to codify civil law at a national level
- From 1803 legislative power of the cantons regarding civil law
- 3 groups of cantonal civil codes:
 - **Influenced by the Napoleonic Code:**
 - Geneva (1804)
 - Waadt (1819)
 - Tessin (1837)
 - Freiburg (1835-1850)
 - Wallis (1853-1855)
 - Neuenburg (1854-1855)



Civil Codes of the Cantons

- **Influenced by the Austrian Civil Code:**
 - Bern (1824-1831)
 - Luzern (1831-1839)
 - Solothurn (1841-1847)
 - Aargau (1847-1855)
- **Influenced by the Zurich Civil Code (1853-1856)** «Zürcher Privatrechtliches Gesetzbuch» (PGB)
 - Thurgau (1858-1860)
 - Schaffhausen (1863-1865)
 - Glarus (1869-1874)
 - Graubünden (1862) -> Further influenced by the Napoleonic Code, the Prussian and Austrian Civil Code



Jurisprudence in Switzerland

- The increasing scientification of law in Switzerland was most prominently promoted by Friedrich Ludwig Keller (1799-1869) and Johann Caspar Bluntschli (1808-1881)
- Keller und Bluntschli were students of Savigny



The period of codification

- With the founding of the federal state in 1848 preliminary discussions concerning a federal legislative power for civil law matters arose
- Need for legal harmonization became apparent because of social developments (e.g. increasing movement of persons and goods)
- Discussions about legal harmonization initially began with regard to commercial-, civil- and exchange law



The period of codification

- **Total revision of the Federal Constitution in 1874:** The Federal legislative power with regard to obligations-, commercial- and exchange law, civil capacity, copyright law, debt enforcement and bankruptcy law

Art. 64 of the Federal Constitution 1874:

(1) The Confederation is entitled to legislate

- on civil capacity,
- on all legal matters relating to commerce and movable property transactions (law of contracts and tort including commercial law and law of bills of exchange),
- on copyrights in literature and arts,
- on suits for debts and bankruptcy.



The period of codification

- 1874: Civil status and marriage law act (entered into force in 1876)
- 1881: Code of Obligations (entered into force in 1883)
- 1898: General legislative power on the federal level for civil law matters

Art. 64 of the Federal Constitution 1874:

(2) The Confederation is also entitled to legislate in the other fields of civil law.



Code of Obligations (1881/1883)

- Preliminary work started in 1863 with the appointment of Walther Munzinger (1830-1873) to draft a commercial code for the canton Bern and to submit a prior assessment of a federal commercial code
- 1871: First draft of the Code of Obligations (influenced by the PGB, Napoleonic Code and the Austrian Civil Code)
- 1877: Second draft of the Code of Obligations → adopted in 1881 and entered into force in 1883
- The Code of Obligations of 1881 (1911 and 1937) comprised provisions regarding:
 - the general and specific law of obligations (contracts and torts)
 - Commercial- and exchange law
- Unique feature: provisions regarding commercial law in the Code of Obligations



Swiss Civil Code (1907/1912)

Eugen Huber (1849-1923):

- President of the Swiss Lawyer's Association
- Professor of Public Law, Private Law and Legal History at the universities Basel and Bern
- Supporter of the Germanist's approach of the German Historical School
- 1886-1893: „System und Geschichte des schweizerischen Privatrechts“ (System and History of Swiss Private Law)-> basis for unification of Swiss private law on a federal level
- 1892: appointment of Huber to prepare a first draft of the Swiss Civil Code





Swiss Civil Code (1907/1912)

- 1904: First draft of the Swiss Civil Code
- 1907: unanimous adoption of the draft code
- 1911: revision of the Code of Obligations to adapt to the Civil Code (first revision, entered into force on January 1st 1912)
- 1 January 1912: Entry into force of the Swiss Civil Code
- 1936: second revision of the Code of Obligations „Bundesgesetz über die Revision der Titel 24-33 des Obligationenrechts“ (entered into force on 1 July 1937)



Structure and system of the Swiss Civil Code

- Code of Obligations as the 5th part of the Swiss Civil Code
- SCC:
 - Introductory provisions
 - Law of Persons (I)
 - Family Law (II)
 - Law of Inheritance (III)
 - Law of Things (IV)
- No general part in the Swiss Civil Code

Art. 1 para. 2 Swiss Civil Code:

In the absence of a provision, the court shall decide in accordance with customary law, and in the absence of customary law, in accordance with the rule that it would make as legislator.



Reception of the Swiss Civil Code (including the Code of Obligations)

- Swiss Civil Code and Code of Obligations served as models for modern and progressive civil law codifications:
 - Liechtenstein
 - Italy (*Codice Civile* of 1942)
 - Greece
 - Peru
 - Siam
 - China (until 1949)
 - Turkey (adopted the Swiss Civil Code almost entirely)



Emilie Kempin-Spyri (1853-1901)

