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History of Codification in Private Law in Ukraine: Experience, Problems and Prospects

ABSTRACT: *One of the initial methodological imperatives for studying private law in Ukraine is the understanding of law as a phenomenon inherent in Western European culture (civilisation), later adopted by countries belonging to other civilisations. The classical model of private law is recognised as Roman private law of the 'classical era', interpreted through the prism of future modernisations of worldview and legal concepts. In comparing private law within the Western and Eastern European legal traditions, the author observes that private law is an organically inherent phenomenon in Western Europe, while in Eastern Europe, it is largely considered civil law. Various factors – political history, worldview, economic development, culture, outlook and legal system – have been shaped by both Western and Eastern influences, with the author concluding that Ukraine represents a 'frontier civilisation', a zone of intense interaction between different cultures. This, in turn, has influenced the formation of private law.*
Old Ukrainian law developed in two stages. The first codified act was the Russkaya Pravda. An analysis of its provisions related to real and obligation law reveals similarities to Roman law. It can be concluded that the private law tradition in medieval Ukraine specifically reflected the competition between Eastern and Western European legal traditions with the predominance of the former based on the customary law of Kievan Rus, while the latter gained dominance when the Statutes of the Grand Duchy of Lithuania was being created.

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Since the late nineteenth century, most of Ukraine was governed by the laws of the Russian Empire, except territories under the rule of Austria–Hungary, Poland, Romania and others, where the legislation of the respective states – reflecting the Western tradition of law – remained in force. Therefore, the Ukrainian legal tradition was shaped by Western influence. The author observes that the 'Great European Codifications' affected Ukrainian law differently at various stages of its modern and contemporary history, noting that the Austrian codification exerted the greatest practical and doctrinal impact on the development and codification of civil law in western Ukraine. As for areas under Russian rule, the nature of law was determined by Russian jurisprudence's reliance on the doctrine of German law and the German experience in codifying civil law. The Soviet period was characterised by the predominance of public law norms, by which the authorities sought to neutralise the perceived threat of 'private law excesses' in civil law regulation. Simultaneously, while regulating relations in a society that fundamentally denied the existence of private law, many of its provisions reflected the influence of bourgeois private law, mainly the German Civil Code Bürgerliches Gesetzbuch (BGB) – and through it – Roman private law.

The private law of independent Ukraine is characterised by a gradual return to humanistic values: legal support for individual sovereignty, guarantees of personal rights, equalisation of the legal status of the individual and the state, and assurance of the freedom to exercise one's rights. The Civil Code of Ukraine of 2003 can be considered an act of universal application, regulating all property and non-property relations that are within the scope of private law, and are not governed by special legislation. The process of Ukraine's integration with the EU has necessitated the adaptation of domestic civil legislation to the European concept of private law, a process that is unfolding through ongoing recodification.

■ **KEYWORDS:** *private law, civil law, frontier civilisation, codification, recodification, Western European legal tradition, Eastern European legal tradition*

1. The Origin of the Codification of Civil and Commercial Private Law in the Nineteenth Century

■ *1.1. Preliminary Remarks*

One of the foundational methodological imperatives in the study of private law is to understand law as a phenomenon inherent in Western European culture (civilisation), later adopted by countries from other civilisations.

The classical model of private law is the Roman private law of the 'classical era' (first to third centuries), now considered through the prism of evolving worldviews and legal concepts.

When evaluating the role of private law within the Western and Eastern European legal traditions, it is imperative to recognise that private law is organically inherent in Western Europe, while in Eastern Europe, it is more commonly understood and assessed as civil law.

■ *1.2. Historical and Cultural Context*

The study of the historical and cultural context of private law codifications in Ukraine cannot begin solely with the nineteenth century. At that time, Ukraine had effectively transformed into a 'civilisational frontier', a 'frontier', a formation that began after the conquest of the Kievan Rus lands by the Tatar-Mongol horde. The concept of the 'frontier' was first introduced in 1893 by Professor Frederick Turner of the University of Wisconsin. Contemporary researchers typically refer to American scholar Owen Latimer's 1940 definition, which describes the frontier as a zone of intense interaction between different 'adjacent' cultures.[1]

Ukrainian researchers use the term 'frontier'[2,3].

The authors proceed further from the understanding of the 'frontier' as a zone of intense interaction between different cultures – the 'frontier of civilisations', where, under certain conditions, specific 'frontier civilisations' may emerge.

The characteristic features of a frontier civilisation include the competition, interaction or mutual influence of values, which ultimately leads to the displacement of certain values by others or their symbiosis. Such competitions typically occur in a 'peaceful manner', as a result of which the frontier civilisation voluntarily adopts the values of a dominant culture. However, victory in the 'competition' between civilisations can also be achieved through the use of force, political, economic and psychological pressure. In such cases, the worldview of society is distorted, and civilisational values and interests are forcibly replaced, potentially leading to the destruction of the weaker civilisation.

Considering the 'value basis' of the concept of law, which aims to ensure individual sovereignty, it is imperative to emphasise the 'Western tradition of law', that is, the legal values, concepts, categories and institutions inherent in Western European civilisation, grounded in the worldview, culture and outlook of the Western world, which can be traced back to Greek and Roman antiquity.[4] It is on the basis of the Western tradition of law that private law has been formed and exists as a concept inextricably linked to Western European civilisation.

1 Chornovol, 2016.
2 Chornovol, 2015.
3 Vermenych, 2024.
4 Popper, 1994.

■ *1.3. Problems of Ukraine's Civilisational Orientation*

As a result of many factors, Ukraine, having existed for several centuries as an independent state – Kievan Rus – later transformed into a group of state entities, and even later, after losing its independence, became part of the Russian Empire, then the Soviet Union, regaining statehood only in 1991. Accordingly, its political history, worldview, economic development, culture, outlook and legal system have been strongly influenced by both the West and the East. These circumstances have shaped Ukraine's civilisational orientation and the development of its private law tradition.

Historical monuments testify to the contacts between Kievan Rus and Rome, including indirect connections through the Celts, with whom Ukrainians maintained political ties.[5]

Kyiv also had active relations with Constantinople. In the 1530s and 1540s Justinian I negotiated with the Ants, inviting them to ally with Byzantium in defending against the Bulgarians. Contacts intensified in the ninth century, when several Russo–Byzantine treaties were concluded to restore trade, disrupted by the 860 war. The Tale of Bygone Years contains the texts of four Russo–Byzantine treaties of 907–971, which comprise provisions of international, criminal and private international law, in particular, rules governing inheritance procedures for Ruses who served the Byzantine emperor. These treaties reference both Byzantine law and 'Rus' laws', indicating that these legal orders were connected.

For a long time, Ukraine existed in a zone of competition between Western and Eastern Europe. In the Middle Ages, the term 'West' traditionally meant Western (Latin) Europe, located to the west of the Galicia–Volhynia principality, while 'East', depending on the situation, implied either Byzantium or Moscow.

Ukraine's cultural contacts were unique in that they were largely indirect with both the East and West. In Kievan Rus, Byzantine sources were perceived mainly through Bulgaria. Catholicism and the Counter-Reformation were established through Poland, and classicism through Russia. I. Shevchenko perceives this as a certain weakness and advises not to repeat the mistakes of the past, but establish direct contacts with the broader world at all levels.[6]

These processes developed later, facilitated by the lack of territorial unity and the division into Left Bank and Right Bank regions.

Along with the concept of Ukraine's 'East–West' place, the nation is also characterised as a 'country of borders', reflecting the influence of European tradition from the West, Russian tradition from the East, and Central Asian tradition from the South.[7]

5 Shelukhin, 1929.
6 Shevchenko, 1996, p. 7.
7 Rudnytsky, 1994.

However, it is important to note that the so-called West, East and South are represented by countries that are themselves marginal entities with rather ambiguous historical realities: Russia cannot be considered the classical East, Turkey as the South and Poland as the West. Therefore, it seems logical to discuss some general guidelines and structural elements.[8]

The problems that have arisen in this regard are multi-dimensional,[9] most notably the influence of the Greco–Byzantine East on the spiritual tradition and the Latin West on the socio-political structures of Ukraine–Rus.[10]

The fact that Rus could choose between 'Greece (Byzantium) and Rome',[11] and opted for 'Greece' predetermined Ukraine's subsequent orientation toward Eastern European civilisation, its affinity for 'Greek–Slavic' literature and to some extent the limitation of its active interethnic relations to the Greek–Slavic world.[12]

The adoption of Christianity in its orthodox (Orthodox) form signified a political and cultural rapprochement with Byzantium, affirming Ukraine's belonging to European civilisation. With the introduction of Christianity, church structures began to evolve rapidly, and the number of monasteries increased, which further facilitated the spread of Byzantine (i.e. modernised Hellenistic) culture.

Some researchers believe that Christianity, particularly in its Eastern rite, not only had a profound influenced on Ukrainian culture, but also substituted state institutions for many generations, as social movements, liberation wars and uprisings were shaped by religious influence.[13]

However, regarding the formation of Kievan Rus' civilisational orientation following the election of Orthodoxy as the state religion,[14] it is worth noting that it did not immediately become a worldview, as it had to compete for a long time with local customs and traditions.[15]

■ *1.4. Medieval Ukraine between East and West*

During the Mongol rule, the Moscow Kingdom, which had previously functioned as a Turkic appendage (ulus) from a civilisational perspective, began to claim the legacy of the Kyiv principality as the successor of Byzantium.[16] The 'Tatar trace' receded after Ivan III's authority was recognised by Tver in 1485, when he declared himself 'Tsar of All Russia', and the imperial doctrine began to be introduced

8 Davis, 1997.
9 Karmazina, 1998.
10 Yakovenko, 1998, p. 154.
11 Malanyuk, 1995.
12 Nalyvaiko, 1998.
13 Stepovyk, 1993.
14 Filaret, 1999.
15 Morachevskyi, 1997.
16 Shyrokorad, 2004, p. 7.

into the political consciousness of society. Moscow thus asserted its claim to the position of the 'third Rome', gaining support through organisational and ideological means.

Meanwhile, in Ukrainian culture, local and Orthodox traditions coexisted competitively. On one hand, the Zaporozhian Sich was regarded in the West as a 'Cossack Christian Republic'.[17]

However, the Cossacks' entire ritual life, particularly the election of the ataman and foreman, reflects the influence of strong archaic folk traditions dating back centuries and bears only a tangential relationship to Christianity, primarily reflecting the existence of mythological stereotypes within the Cossacks.[18]

Resistance to Orthodoxy was not limited to Zaporizhzhia, but was also evident in the local worldview in general. In particular, church-sanctioned marriage introduced by the Synod in the seventeenth and eighteenth centuries, was initially met with reluctance; even after its acceptance, the final validation of the marriage union remained with folk rites.[19]

A critical attitude towards orthodoxy as 'Byzantium' can be observed in Taras Shevchenko's poems, where the 'Byzantine faith' is opposed to God, who transcends all interfaith competitions.[20]

This perspective most accurately reflects the essence of the Ukrainian worldview, the vision of its place in the environment: not aligning with the Eastern or Western branches of Christianity, but embracing Christianity as such, a faith in God the Creator that does not consider man as a slave.[21]

This underlines the distinctiveness of Ukraine's civilisational orientation as a European state, one that is constantly reflecting on its worldview, and explaining why Ukraine's cultural space is designated as a 'synthesis between East and West'.[22]

From the twelfth–sixteenth centuries, a situation arose when Ukraine could deviate from Eastern European civilisation and move closer to Western European civilisation. In politics, attempts towards Western reorientation are associated with the so-called Golden Horde yoke; Danylo Halytskyi closed Europe from the Juchi ulus with his possessions, which was duly recognised by the Catholic world and contributed to the acknowledgement of Ukrainian statehood by Western Europe.

It was during this period that differing approaches to the Golden Horde ('Juchi Ulus') emerged in the territories that later became Ukraine and the Moscow principality, which eventually transformed into Russia. In particular, the princes

17 Nalyvaiko, 1992.
18 Balushok, 1998.
19 Ukrainska mynuvshyna, 1994, p. 176.
20 Veretka, 1999, p. 38.
21 Kachurovskyi, 1993; Pahutiak, 1998, p. 97.
22 Lypynsky, 1995; Yakovenko, 1998, p. 154.

of Southern (Kyivan) Rus, Mykhailo of Chernihiv and Danylo of Halych, pursued a pro-Western (papist) policy in the mid-thirteenth century, supported by certain confessional circles. Notably, Metropolitan Petro Akerovych of Kyiv made a speech at the Council of Lyons in 1245, advocating for a joint crusade against the Mongols. The people also approved of this policy.

Alternatively, the princes of Northeastern Russia accepted Batu Khan's 'friendship' and avoided rapprochement with Europe. Alexander Nevsky emerged as a reliable leader of this policy. His actions are positively assessed in Russian historiography, unlike the efforts of Mikhail and Daniil.[23]

In any case, the outcomes of such divergent approaches to the Juchi Ulus are well-known: for Ukraine, 120 years of Mongolian dependence were followed by integration into the European legal space, accompanied by the loss in statehood; for Mokva, it meant 240 years of obedience to Russia and the development of a strong despotic state, legal nihilism.[24]

Attempts were later made to restore Ukraine's Western orientation, although due to geopolitical factors, the focus increasingly shifted to culture, art and religion. In particular, in the sixteenth century, Latin[25] and Polish poetry flourished, with their significance persisting even after the victory in the War of Liberation (1648–1656), when the Ukrainian book language gained official status. The linguistic landscape began to change only after 1705, as a result of the Russian tsar's increasing pressure on Ukraine.[26]

In the early seventeenth century, several cultural developments aimed at rapprochement with the West. In 1632, the Kyiv–Mohyla College was established, which introduced a new, pro-Latin Baroque style of education. The Kyiv–Mohyla College became the first Ukrainian university where young people received a European-style education. In 1633, the Kyiv Cave Monastery printing house began publishing books in Polish and Latin. From the late fifteenth to the late sixteenth century, Ukraine moved away from the Byzantine tradition towards a pan-European culture.[27]

Concurrently, a polemic unfolded between the Orthodox and Catholic churches, which in Ukraine acquired signs of social and national conflict, as reflected in the history of the Unions.[28]

Nevertheless, the Union of Brest can be interpreted as a means of integrating East Slavic spiritual culture into European culture. In general, during the seventeenth to twentieth centuries, the Union played a positive role in developing

23 Gumilev, 1992.
24 Vovk and Otroshchenko, 1997, p. 93.
25 Yaremenko, 1987.
26 Shevchuk, 1998.
27 Shevchuk, 1999.
28 Shevchenko, 1996, p. 10; Dnistryanskyi, 1997; Khomchuk, 1997.

Ukrainian spiritual culture, while contributing to the preservation of its national identity.

■ *1.5. The transfer of part of the Ukrainian territories to Moscow's rule*

In 1654, Moscow state entered into a military and political alliance with the Ukrainian Hetman B. Khmelnytsky, leading to Ukraine's accession to Moscow. In 1654–1657, the Hetmanate and Muscovy jointly fought for the liberation of Ukrainian territories from the Polish–Lithuanian Commonwealth. During this conflict, Moscow also attempted to annex Belarus and regain the Smolensk region. Under the separate Andrusiv Armistice of 1667, the Moscow state received the Smolensk region, Left-Bank Ukraine, Siversk land including Chernihiv and Starodub, and Kyiv – for two years – along with the adjacent territory on the right bank of the Dnipro River. Moscow–Polish relations were finally established with the signing of the 'Eternal Peace' treaty in 1686, under which Left-Bank Ukraine and Kyiv remained under the Moscow Kingdom. Under the terms of the treaty, Muscovy joined the 'Holy League' – an anti-Turkish coalition of European states that was formed during the war of Austria and the Polish–Lithuanian Commonwealth against Turkey that began in 1683.

For some time, Ukraine was perceived by Russia as a kind of bridge to Europe, particularly in the cultural field.

This perspective was reinforced by Tsar Alexei Mikhailovich's policy, which translated Moscow's Orthodox eschatological mythology as the Third Rome into a concrete political programme – to unite all Orthodox countries under his scepter and establish a new Byzantium – the Ecumenical Greek–Russian Eastern Orthodox Empire, with Moscow as its centre, and to assume the role of its emperor. The accession of Ukraine and Nikon's reforms (unification of church ritual and culture based on the Ukrainian model) could be seen as the first stage of this programme, especially since Ukraine and its Baroque culture symbolically linked Moscow not only to Greece but also to Western Europe.

The idea of 'Kyivan heritage' is also evident in the choice of the name 'Russia'. As Norman Davies notes, the Moscow princes emerged from obscurity within two centuries of the Mongol invasion, appropriating the hereditary title of Grand Dukes of Vladimir in 1364. This prompted the Metropolitan of Kyiv to move his seat (residence) from Kyiv in 1300 to Vladimir on the Klyazma River and later to Moscow in 1308. Having served the Mongols in 1327 by suppressing the uprising of their main rival, the city of Tver on the Volga, Ivan Kalita and his successors, despite Dmitry Donskoy's victory over the Mongols in the Battle of Kulikovo in 1380, remained vassals of the Horde.

It was during this period that the Muscovites began referring to their state by the Greek term 'Russia', meaning 'Rus', and called themselves Russians. These

Muscovites had never ruled Kyiv, but this did not prevent them from claiming Moscow as the only legitimate heir to Kyiv's lands.[29]

However, the significance, influence and longevity of the 'Kyivan heritage', and most importantly, its influence on Moscow's civilisational orientation, should not be exaggerated. Edward Keenan noted that when shaping his own imperial style, Ivan III deliberately avoided references to Kievan Rus, instead emphasising the kinship between Muscovy and Byzantium, and Moscow's continuity with the latter. Architects, coin minters and other specialists were invited from Renaissance Italy to transform Moscow from a provincial city into a magnificent royal residence: the buildings of the Moscow Kremlin were conceived as a carefully considered manifestation of the newly established dynasty's understanding of its essence.

■ *1.6. The influence of the Church on the formation of legal consciousness of Ukrainians*

The events created differences in the development of legal consciousness among Ukrainians, depending on the predominance of Western or Eastern cultural elements. For centuries, the national forms of life, traditions and customs of people in the eastern part of Ukraine were assimilated by both state authorities and the Orthodox Church, which became a stronghold of social conservatism and anti-Ukrainian sentiment.

In western Ukraine, which for a long time was part of Austria–Hungary and Poland, the Greek Catholic Church helped the population preserve their individuality and maintain connections with Western culture. Accordingly, among the defining features of the population of Galicia are the historically rooted traits such as diligence, law-abidingness, managerial, determination and national patriotism, which, under qualified leadership, could form an effective basis for state building.[30]

Being part of two empires with contrasting cultures, the Ukrainian people found themselves in a difficult situation: their cultural core was also divided into two subcultures: Eastern and Western. As a result, Ukrainians were rarely perceived as an integral entity.

Researchers have noted differences between the populations of Naddnipri-anshchyna and Galicia not only in language, psychology and church denominations, but also in their level of legal awareness.

Universal morality among the population of Greater Ukraine was largely preserved through deeply rooted traditions and customs. Therefore, it can be concluded that the national foundations in Naddnipriansh chyna and Galicia were

29 Davies, 2000, p. 574.
30 Khomchuk, 1997.

similar, and the unifying factors among the people are particularly distinctive, partially mitigating regional differences.[31]

It would be an oversimplification to perceive confessional orientation and its influence as a West–East confrontation, assuming that Polonisation necessarily led to Catholicisation, and that geographic proximity to Russia contributed to the strengthening of Orthodoxy. It would be more accurate to characterise that Western and Eastern Christian traditions were interwoven across Ukraine.

In general, it can be concluded that while in the early Middle Ages, Kievan Rus, including Ukrainians, assimilated the Byzantine tradition, disseminating Greco–Roman culture to neighbouring territories, from the late fifteenth to the late sixteenth centuries, Ukraine became part of the broader pan-European context, a trajectory disrupted by the genocidal actions of Peter the Great.[32]

After Ukraine's accession to Russia, its Western orientation, despite periodic efforts to maintain some independence, was forced to diminish, as the country was increasingly drawn into the historical development of the Russian Empire, which typologically positioned itself as the heir to Byzantium.[33]

It is worth noting that Ukraine's worldview retains distinctive features and differences in the perception of Orthodoxy remain.

For example, until the middle of the seventeenth century, Moscow's culture was influenced by Byzantine, Bulgarian and Serbian cultures of the fourteenth to sixteenth centuries – the so-called 'second South Slavic influence', based on Isichism, a mystical movement in Orthodoxy that dates back to early Christianity and involves the deification of humankind through unity with God at the divine energy level. Orthodoxy in Ukraine in the sixteenth and seventeenth centuries endured the expansion of Jesuit Counter-Reformation Catholicism – placing Ukrainian culture simultaneously within the orbit of both Byzantine Orthodox and Roman Catholic cultures. This openness to external influences became a prerequisite for a new – Baroque – model of Ukrainian Orthodoxy. On one hand, it allowed Orthodoxy to be introduced into the broader pan-European cultural context, but on the other, encouraged the formalisation of spiritual life in Ukraine, distancing it from the patristic Orthodox tradition.

Ukrainian Baroque culture was based on anti-mystical intuitions, rationalism, Aristotelianism and the so-called 'second' (Counter-Reformation) scholasticism. Simultaneously, the 'second South Slavic influence' also shaped Ukrainian culture, although its duration was shorter than in the Moscow Kingdom, until the second half of the sixteenth century.[34]

Therefore, 'Byzantine influences reached Ukrainian lands in several large waves – first through the Balkan Slavs, then directly through Byzantium, and

31 Vaskovych, 1998, p. 110.
32 Shevchuk, 1993, p. 90.
33 Shmorgun, 1998, p. 31.
34 Okara, 1999, p. 55.

after its decline, through early modern Greek literary and ecclesiastical wisdom. Byzantine influences constituted the specificity of Ukraine, but, on the other hand, made it part of a broader Eastern Christian community. This cultural and religious identity determined the political orientation in modern times. ...What allowed Ukraine to hold on to its national identity was the influence of the Catholic West.... Ukrainians resisted these influences when they threatened their national and religious identity. ...The greatest paradox was that the West, which threatened to disintegrate Ukraine, ultimately became its barrier against the Russian threat and allowed Ukrainians to preserve their identity'.[35]

■ *1.7. The first codifications of law: Russian Law and the Statutes of the Grand Duchy of Lithuania*

Old Russian law evolved in two stages. The first, dating back to the sixth–ninth centuries, marked the transition from causal to customary law, while the second (ninth–tenth centuries) from customary (oral) to written law. It includes the Russo–Byzantine treaties that enshrined the provisions of ancient Russian law of the early tenth century.

The first codified act was the Rus' Pravda. An analysis of its provisions relating to real and obligation law concluded that they are similar to Roman law. The general influence of Byzantine legal concepts on inheritance, marriage and family law is significant, indicating that while Russkaya Pravda was a product of ancient Russian lawmaking, it also reflected the influence of Roman law as transmitted through Byzantine interpretation, reworking certain principles and individual norms.

During the Mongol occupation, Ruthenian law continued to operate partially, while the influence of Byzantine law increased due in part to the role of the church.[36]

However, the influence of Mongol customary law on Old Russian legal practice remained insignificant, and the Orthodox Christian tradition in Ukraine was still taking shape. Gradually, the Rus' Pravda was replaced by new legislation that initially resembled the Old Rus' law, but increasingly underwent modernisation.

■ *1.8. Statutes of the Grand Duchy of Lithuania*

To modernise the legislation, three statutes were enacted during the sixteenth century: the 'Old' statute in 1529, the 'Volyn' in 1566 and the 'New' statute in 1588.

The 'Old' statute was the first general code of the Lithuanian state, which also encompassed Ukraine. In terms of content and structure, it closely resembled Rus' Pravda. Therefore, it can be considered a partial reception of ancient Russian law. However, since its norms were no longer suitable for regulating the relations

35 Hrytsak, 1998, p. 19.
36 Lashenko, 1998.

of the developing feudal society, a commission was established in 1544 to draft a new statute.

Augustin Rotundus and Petrus Roizius, experts in law and history, played a key role in drafting the second statute of the Grand Duchy of Lithuania. Based on the Western European worldview, they advocated the expediency of using Roman law as a model and a source of auxiliary material. With their active participation, the provisions of the Old Statute were updated and various categories of Roman law were introduced.

In 1566, the second statute was adopted by the Sejm, extending its application to Volhynia, Podillia and the former Kyiv principality. Its structure and several provisions bear similarities to the Digest and the Code Justinian. In the authors' view, this represents a reception of Roman law, involving the adoption of Roman norms and rules and their adaptation to local conditions.

Roman law also influenced the 1588 statute, which regulates the relations of private land ownership, applicable to both landlords and peasants, and devoted considerable attention to contract law.

In general, the Statutes of the Grand Duchy of Lithuania emerged from a creative synthesis of existing Lithuanian legislation and judicial practice, provisions of Roman, German, Polish law, as well as the customary laws of Lithuania, Poland and Ukraine.

In general, the tradition of private law in medieval Ukraine specifically reflected the competition between Eastern and Western European legal traditions, with the former prevailing on the basis of the common law of Kievan Rus and the latter dominating during the creation of the Statutes of the Grand Duchy of Lithuania.

■ *1.9. Eighteenth century: 'The rights by which the Little Russian people are judged'*

After Ukraine's accession to the Moscow state, the 'former rights', i.e. customary law, Polish–Lithuanian law and the Magdeburg Law, continued to be applied in the Hetmanate in accordance with the March Articles.

However, Moscow aimed to harmonise Ukrainian law with Russian law and gradually unify legislation. Therefore, a codification commission, headed by Judge General I. Borozna, was established by a decree dated 28 August 1728. After his death, the commission was led by the General Commissary Y. Lyzohub. Fifteen years later, the commission submitted a draft law in 1743, which was based on Roman and German sources, the Statutes of the Grand Duchy of Lithuania, Polish law, Ukrainian customary law and judicial practice.[37]

The content of the 'Rights by which the Little Russian people are judged' was shaped by Roman law and its Byzantine interpretations, which is especially

37 Prava, za yakymy sudytsia malorosiiskyi narod 1743 roku, 1997.

evident in the order of presentation of the rules: marriage, guardianship, wills, inheritance by law, contracts and land matters. At the same time, Roman private law also influenced the regulation of property relations. The relevant sections distinguished between possession, ownership and easements. The legal regime of movable and immovable property was different, and the original and derivative ways of acquiring property rights were clearly defined. The right of ownership was protected through a reclamation action, identical to a vindication claim; session defense was allowed.

The influence of Roman law was also evident in the provisions on obligations, including the very concept of obligations, their classification, and the grounds for their occurrence. As in early Roman law, there was no clear distinction between public and private torts, implying that the initiation of criminal proceedings depended mainly on the will of the victim or relatives. Considerable attention was paid to contract law.[38]

The tsarist government was dissatisfied with the draft since it differed from Russian legislation; therefore the law was never officially adopted. Meanwhile, the 'Rights by which the Little Russian people are judged' continued to be applied until the enactment of the Code of Laws of the Russian Empire, after which the use of local legislation was prohibited.

■ *1.10. 'Collection of Little Russian Rights of 1807'*

Despite the creation of the imperial Code of Laws, there remained a need to update and systematise legislation that no longer met contemporary requirements, especially regarding the regulation of economic relations. Therefore, even during the compilation of the Code, the 'Collection of Little Russian Laws' was produced, with materials systematised regionally in Ukraine. On the Right Bank of Ukraine, the work was led by A. Povstansky, and on the Left Bank by F. Davidovych, under the general supervision of P. Zavadovsky.

The 'Collection of Little Russian Rights' comprised three sections, organised according to the institutional system (with some variations in the regulation of inheritance). In areas such as legal capacity, private property rights, easements, mortgages and possession, the influence of ideas inherent in bourgeois society was evident. This influence was particularly pronounced in the law of obligations, which established a well-regulated system of contracts. A characteristic feature of contract law was the principle of freedom of contract.

This reflects a high level of legal culture and technique, with the influence of Roman private law clearly evident. Not only were specific ideas, institutions and legal provisions adopted from there, but also the broader approach – marked by the richness and flexibility of the rules. In addition, the sources of the Collection of Little Russian Laws of 1807 included the Statute of the Grand Duchy of Lithuania

38 Boiko, 1999, p. 88.

(515 references), the Saxon Mirror (457 references), the Law of Helminth (224 references) and the Law of Magdeburg (58 references).

Therefore, the basis of the first draft of the Civil Code of Ukraine was essentially Lithuanian law, which itself was the product of a partial reception of Roman law in its Byzantine and Western European interpretations (derivative reception through Old Russian, German and Polish law), alongside German and Polish law, which reflected a reception of Roman law of the Western European type.

However, as the Russian government sought to abolish the existing Ukrainian legal system and extend Russian law to Ukrainian territories, in order to harmonise the legal systems of Ukraine and Russia and eliminate local peculiarities,[39] Ukrainian bills had little chance of being implemented.

From the late nineteenth century, most Ukrainian territories were governed by the legislation of the Russian Empire, shaped by Byzantine influences, which Russian imperial authorities attempted, largely unsuccessfully, to overcome by introducing the German concept of law.

This did not apply to the Ukrainian territories under Austria–Hungary, Poland, Romania, etc, where the legislation of the respective state was in force, reflecting Western legal traditions. Therefore, the Ukrainian legal tradition in these areas developed under Western influence.

2. Major European Codifications: Impact on Ukrainian Law

The 'great European codifications' that occurred mainly in the nineteenth and early twentieth centuries are of considerable interest from the perspective of using their experience, since they were carried out in circumstances relevant to Ukraine. Simultaneously, their impact varied across different parts of Ukraine and under different powers throughout its modern and contemporary history.

The Austrian codification exerted the greatest practical and doctrinal influence on the development and codification of civil law in the western Ukrainian lands.

■ *2.1. The Austrian Code on Ukrainian lands*

It is believed that the views of Austrian legal scholars differed only slightly from those of their German counterparts.[40]

However, the authors do not endorse this view. Despite the authority and influence of German jurisprudence, Austrian civil law of the eighteenth and

39 Boiko, 1999, p. 240.
40 Maidanik, 2009.

nineteenth centuries developed its own doctrine, as evidenced by the adoption of the Austrian Civil Code of 1811 (ABGB).[41]

The ABGB is characterised by a combination of critical rationalism and the classical values of Roman private law. Its concept and content differ significantly from the German BGB, as reflected in its structure, in the requirements to take into account the principles of natural law when determining the status of an individual, ensuring personal rights and interests. For example, § 7 contains mechanisms for addressing gaps in the law.

According to the ABGB, if neither the letter nor the spirit of the law provides a solution to the problem, the judge is obliged to refer to similar cases in which the law provides guidance, as well as to the principles of other laws related to the matter being considered. If in doubt, the judge must 'carefully weigh all the circumstances and resolve the problem on the basis of the principles of natural law'.

The ABGB's structure mirrors the Gaius' system of institutions, beginning with a brief introduction, followed by three parts regulating the legal status of the individual, rights in rem, and provisions common to personal rights and rights in rem.

Its underlying concept is deeply rooted in natural law and the ideals of the Enlightenment. It is characterised by the belief that customary law, which is largely outdated, fragmented and incomprehensible, can be replaced by a comprehensive state-sanctioned code that is logical, simple in structure and governed by clear and fair rules.

Despite its merits, the ABGB did not exert a significant influence beyond Austria. This is explained by political, historical, economic and other contextual factors.[42]

The authors attribute this to the ABGB being ahead of its time, and although inferior in some aspects to other acts of this rank, it was conceptually more progressive. European civilisation was not yet ready to accept the natural-law concept, supplemented by the principles of Roman law, that underpinned the Austrian Code.

From the perspective of this study, it is important to assess the extent to which the ABGB concept influenced the updating (codification) of civil legislation in the Ukrainian lands.

Accordingly, it is imperative to assess the significance of the "Civil Code of Galicia of 1797' ('Civil Code for Eastern Galicia').[43]

The 'Civil Code of Galicia of 1797' is considered one of the earliest codified acts in civil law 'not only in Ukraine or Europe, but also in the world, as an attempt

41 On the ABGB as a model codification, see Veress, 2023, pp. 196–199.
42 Zweigert and Kötz, 1998, p. 258.
43 Hrazians'kyi kodeks Vostochnoyi Halytsiyi, 1797.

to adopt the provisions of Roman private law, which took place in the Ukrainian lands'. Meanwhile, according to I. Boyko, discussions should focus on the 'Austrian Civil Code' and its testing in Eastern Galicia, rather than the 'Galician'.[44]

The authors suggest that such differences arise from diverse 'historical and legal', civilisational and 'cultural' approaches to understanding the essence of similar phenomena.

From a historical and legal perspective, it is a document in the history of civil law; from the civilistic perspective, it is a product of codification, a legislative act regulating civil relations; from a cultural perspective, it embodies the legislative consolidation of the concept of private law in its natural-law interpretation; and from the perspective of legal technique, it serves as a test case for updating civil legislation to assess both its effectiveness and the adaptability of legal consciousness of the Eastern Galicia population.

It would be an exaggeration to claim that Ukrainian legal scholars contributed to shaping the doctrine of Austrian civil law. However, they played a significant role in adapting the Austrian civil law doctrine to the Ukrainian legal tradition. In particular, O.M. Ogonovskyi was the author of the first Ukrainian-language textbook on civil law in modern Ukrainian legal science.[45.]

Although the textbook focused on Austrian private law, his does not diminish its importance for the formation of Ukrainian civil law doctrine. S.S. Dnistryansky initially based his civil law research on the materials of Austrian legislation.[46]

Later, in the1920s and 1930s he directly examined the problems of 'Ukrainian private law'.[47]

Although S.S. Dnistriansky is regarded as a representative of the sociological school of law, which attempted to weaken legal positivism by emphasising the social nature of norms and natural principles of law, he himself considered Austrian scholar A. Menger, whom he described as 'the creator of the scientific construction of the socialist state (popular workers' state)', as his predecessor.[48]

Therefore, it may seem appropriate to view the development of the concept as part of the broader mainstream of legal research at that time, rather than as the creation of an original legal theory.

When assessing the influence of other European legal traditions on codifications in Ukraine, it is worth noting that the most popular model for imitation – the French Civil Code (Napoleon's Code) of 1804 – did not have a significant impact, even though the Code was extended to Poland after Napoleon' occupation. Although some Ukrainian lands were part of Poland in 1919–1939, Polish Republic

44 Boiko, 2016.
45 Romovs'ka, 2011, p. 107; Redzyk, 2004.
46 Dnistryans'kyi, 1901; Dnistryans'kyi, 1912; Dnistryans'kyi, 1919.
47 Dnistryansky, 1926; Dnistryansky, 1934.
48 Koval, 2012.

policies did not provide for the organisation of codifications in the field of private law within these territories. One can only speak about a certain influence of the Napoleonic Code on the legal consciousness of the inhabitants, but even that influence was too brief to be significant.

Therefore, the Austrian tradition of private law and the codifications made in Austria were decisive in western Ukrainian lands.

With regard to Ukrainian lands under Russian rule, the development of law was determined by the fact that Russian jurisprudence was guided primarily by the doctrine of German law and the German experience in codifying civil law.

The BGB was adopted by the Union Council and approved by the Emperor in 1896. However, its enforcement was deferred until 1 January 1900, to mark the beginning of a new century with a new Civil Code.

The Code follows the pandect system, according to which it is divided into five books: general part, law of obligations, law of property, family law and inheritance law. Its key advantage is the comprehensive general part, which helps avoid repetition in regulating specific types of obligations and particular legal relationships. At the same time, the rules defining the legal status of a person were 'hidden' within the general provisions, representing a step back from the institutional system.

As a result of the debate between representatives of the Romanist (A. Thibaut et al.) and historical (K. F. von Savigny, R. von Jhering et al.) schools of private law, the BGB emerged as a symbiosis of Roman and German law. The first and second books reflect Roman influence, while the third, fourth and fifth are based on Germanic law.

The BGB includes several abstract provisions, enabling the application of its norms to relationships that arose later but remained unknown at the time the draft was prepared. However, the abstract nature of the norms and the complexity of the formulations make the Code difficult for non-lawyers to comprehend, the reason why it is often referred to as the 'code of scholars'.

An analysis of BGB's structural features shows that, while it incorporates elements of Roman law, these were significantly modified to account for the distinctiveness of 'Germanic' law, as well as the ideas of the historical school of law and the school of revived natural law. These modifications affected the structure of the Code (pandectic rather than institutional), its decisions and formulations. Nevertheless, these peculiarities do not diminish the recognition of the BGB's dual Roman and German genesis.

The German tradition also shaped the development of the doctrine of civil law in Ukrainian territories that were part of the Russian Empire. It is important to note that at this stage, the concept of 'Ukrainian civil law' remains conditional, as it was defined not by qualitative (national, subjective) features but solely by territorial characteristics, such as the place of birth, legal education, or the work

of the legal scholar. Therefore, the focus is on the Russian doctrine of civil law and the contribution of scholars who were born or worked in the Ukrainian lands.

Therefore, during the formation of the Ukrainian civil law doctrine in the eastern territories, it was influenced by civil law doctrines of the Russian Empire. Russian civil law theory, in turn, followed German legal thought up until the 1920s. This was facilitated by the depth of German research in philosophy and law, the authority of German legal scholars and the similarities in nineteenth-century Germany and Russia, where both experienced rapid economic development. This required appropriate legal support, primarily with respect to private law. Therefore, German legal scholarship held particular interest for the Russian Empire.

The adoption of BGB also held practical significance for the Russian Empire, as it informed the preparation of the draft Russian Civil Code. This raised questions regarding the essence of civil law, its foundations and the functions of civil–legal regulation. However, the development of civil law doctrine and the concept of civil legislation in the Russian Empire (including Ukrainian territories under its control at the time) remained incomplete, interrupted by the 1917 revolution. From that moment, the formation of the Soviet civil framework began, alongside the evolution of the concept of civil law within the Soviet system and the creation of Soviet civil legislation. In this context, the law was to be fundamentally 'civil' rather than 'private'. Moreover, Soviet authorities sought to equate the concepts of 'civil law' and 'civil legislation' to highlight the decisive role of the state in the creation and application of civil law norms.

During the Ukrainian liberation struggles after World War I, the concepts of law as well as civil legislation had yet to be established on Ukrainian frontier territories. One can only identify the most general principles of legal regulation in areas under Ukrainian control and those occupied by the Bolsheviks: in the first case, efforts focused on securing the rights of landowners (farmers), supporting private initiative, among others; in the second case, private property was abolished, 'war communism' was introduced and public interests were prioritised on Soviet-controlled territories.

From the outset, Soviet power vigorously destroyed the existing system of property relations and central institutions of private law. A characteristic example is the decree of the All-Russian Central Executive Committee (VTSIK) of 19 February 1918, 'On the Socialisation of Land', which declared that 'any ownership of land, subsoil, water, forests, and living forces of nature within the Russian Federative Soviet Republic is abolished forever'. However, only private ownership was abolished, with the state assuming control in its place. The abolition of private property also led to the suspension of inheritance. Specifically, inheritance was abolished in Soviet Ukraine by the Decree of 11 March 1919, and then reinstated by the Decree of 21 March 1919 (but with significant restrictions on the size of the inheritance, circle of heirs and the scope of rights that could be inherited: inherited property was transferred to heirs for use, not for ownership).

In Ukraine, the abolition of private law was somewhat delayed due to national resistance to Soviet rule. This was primarily related to state-building efforts during the Ukrainian People's Republic (UPR). However, efforts to align domestic legislation with European standards took place not only during the UPR but also under the Hetmanate of Skoropadskyi. These efforts are reflected in Pavlo Skoropadskyi's constitutional projects – the 'Letter to All Ukrainian People' and the 'Laws on the Temporary State Structure of Ukraine' of 29 April 1918 – in which private property was regarded as 'the foundation of culture and civilisation', emphasising 'full freedom of trade and ample space for private entrepreneurship and initiative'. Similarly, in the draft of the Basic State Law of the Ukrainian People's Republic in 1920, private property was proclaimed to be 'under the protection of the law'.[49]

However, after the Soviet power was firmly established in Ukraine with Russia's 'help', 'civil legislation in Ukraine then developed in exactly the same way as the legislation of the RSFSR and followed the same paths, without any deviations in terms of time, as the RSFSR'.[50]

The Russian Bolshevik centre controlled the Soviet national republics regardless of their status – whether independent (before the formation of the USSR) or union republics.[51] This extended fully to the formation of the so-called 'republican' legal systems and the approach to reforming civil legislation, fundamentally reflecting the emergence of a new 'Soviet' frontier following the Soviet victory. From a civilisational perspective, it can be characterised as an advance of Eastern (Asian) culture, and from a legal perspective – as the imposition of public-law principles for regulating social relations across all spheres of human life. Soviet law influenced not only the Member States of the Soviet Union, but also the development of law in the so-called Soviet bloc states of Central Europe.[52]

■ *2.2. The First Socialist Codification*

Therefore, the early years of Soviet power were marked not so much by the creation of new civil law norms as by the dismantling of the existing system of property relations and the legal framework that governed them.

However, in 1921, the Bolsheviks were compelled to introduce the New Economic Policy (NEP) – a term used to distinguish it from the previous policy of War Communism. Like War Communism, the NEP extended beyond the realms of economic and social policies. Whereas War Communism represents the Russian Communist Party (Bolsheviks) leadership's efforts to implement the utopian ideas of the Communist Manifesto by Karl Marx and Friedrich Engels through a 'Red Guard offensive', the NEP era signified a retreat from expropriatory politics and

49 Rogozhin and Rumyantsev, 1996.
50 Landkof, 1948, p. 32.
51 Kulchytskyi, 1996, p. 31.
52 On its impact in Central Europe, see Veress, 2023, pp. 281–301.

renunciation of hopes for an immediate global communist revolution. It was characterised by the restoration of market relations, revival of economic activity and efforts to chart paths for the rapid modernisation of the USSR.[53]

On 26 July 1922, the Decree 'On the Basic Private Property Rights of Citizens, Recognized by the Ukrainian SSR, Protected by Its Laws, and Defended by the Courts of the Ukrainian SSR' was issued. It contained practically important decisions, regulating certain types of contracts. However, it became increasingly evident that the need for the creation of a Civil Code was inevitable.

In Soviet Russia, work on the draft Civil Code began in 1922. Some scholars suggested that this was preceded by a significant preparatory period.[54] However, it is evident that such preparation could not have started before the clearly expressed 'party will'. Nevertheless, there was no need for lengthy preparation, given the marked similarities between the Civil Code of the Russian Soviet Federative Socialist Republic (RSFSR) and the draft Civil Code of the Russian Empire. In fact, the developers' task was to adapt the materials of the Code draft to contemporary needs and present them in a concise form, revised to meet the ideological requirements of the RCP(b). One particular requirement was the concentration of 'all means of production and the main instruments' in the hands of the Soviet state, the establishment of strict state control over commercial circulation and the abandonment of the main principles of private law. Additionally, the possibility of using bourgeois experience was rejected. Instead, the goal was 'not yield to the People's Commissariat for Foreign Affairs, which, by its position, pursues the policy of 'adjustment to Europe', but to fight this policy, to create a new civil law, a new attitude toward 'private' agreements'.[55] The Civil Code of the RSFSR, developed in line with these requirements, was adopted on 31 October 1922, and came into force on 1 January 1923.

The draft Civil Code followed the principles common to all Soviet republics. Therefore, the mentioned requirements were also mandatory for developing the draft Civil Code of the Ukrainian Soviet Socialist Republic (SSR), which was adopted on 16 December 1922, and entered into force on 1 February 1923.

At that time, Ukrainian legal scholars made efforts to draw on the achievements of earlier Ukrainian legal thought. In particular, the permanent commission for the study of Western Ruthenian and Ukrainian law at the Academy of Sciences of the Ukrainian SSR, chaired by Academician M.P. Vasilenko, obtained extensive materials from medieval feudal written and customary law in Ukraine. However, the commission's work was considered largely disconnected from the practical realities of the state–legal life of Soviet Ukraine. It was emphasised that

53 Kulchytskyi, 2010, p. 728.
54 Novitskaya, 1990.
55 Lenin, 1964, p. 412.

'only documents and factual materials ... could be used to some extent in the process of scientific research work'.[56]

Any attempt to draw on local historical traditions, discoveries or achievements was deemed to fail, as authorities prioritised the unification of Soviet civil codes. Therefore, at the 4th session of the 9th convocation of the All-Russian Central Executive Committee (VTSVK), alongside the adoption of the Civil Code of the RSFSR, at the initiative of the Ukrainian delegation, a decision was made to 'entrust the Presidium of the VTSVK to address the governments of the contracting Soviet republics with a friendly proposal regarding the implementation/adoption of the codes adopted by the 4th session of the VTSVK also in their republics'.[57]

At the end of November and the beginning of December 1922, the Presidium of the All-Ukrainian Central Executive Committee (VUTsVK) adopted several resolutions emphasising the necessity to develop adopt the Civil Code in Ukrainian SSR. Following a directive from the Presidium of the VUTsVK, the collegium of the People's Commissariat of Justice (NKY) of the Ukrainian SSR, upon receiving the text of the Civil Code of the RSFSR, decided at its meeting on 2 December to use it as the basis for drafting the Ukrainian law. On 4 December 1922, the first draft of the Civil Code of the Ukrainian SSR was prepared and sent for approval to relevant departments. Given the urgency of this task, it was directly submitted to the Presidium of the VUTsVK, which adopted the version proposed by the NKY on 16 December 1922.[58] The final version of the code, as approved by VUTsVK, was reviewed by the collegium of the NKY of the Ukrainian SSR on 20 December 1922, and the text was published in official outlets in January 1923.[59]

Since the ideological and methodological principles guiding their development were similar, the Civil Codes of the RSFSR and the Ukrainian SSR remained identical in structure and content. They consisted of identical sections: general part, property law, obligational law and inheritance law, and contained nearly the same number of articles: 435 in the Civil Code of the Ukrainian SSR and 436 in the RSFSR Civil Code. There were no differences in the structure of the sections and the titles of the chapters.

3. The main institutes of Civil Code of the Ukrainian SSR that defined its 'anti-private' essence

Some important features of individual institutes of the Civil Code of the Ukrainian SSR enabled the Soviet authorities to neutralise the threat of 'private legal excesses' in civil law regulation.

56 Babiy, 1984, p. 26.
57 Stenograficheskiy otchet, 1922, p. 21.
58 Usenko, 1987, p. 54.
59 ZP URSR, 1922, p. 780.

The general part contained norms dedicated to subjects, objects of rights, contracts and statutes of limitations. The subjects of civil law included citizens and legal entities (organisations). All citizens had civil capacity. However, Article 4 of the Civil Code provided for the possibility of 'court-imposed limitations on rights'. The objects of civil rights could only be property not excluded from civil circulation (Article 20). Excluded from circulation were, in particular: land, industrial, transport, and other enterprises; equipment of industrial enterprises, rolling stock of railways, sea and river vessels, and aircraft; transport, public communication structures, etc.; communal facilities (Article 22).

The section on 'Property Law' included norms related to ownership, construction rights and pledges. Article 52 of the Civil Code particularly mentioned state ownership (nationalised and municipalised), cooperative and private ownership. According to Article 54, the subject of private ownership could be any property not excluded from civil circulation. However, this democratic rule was limited by Articles 22 and 24 of the Civil Code, meaning that an entrepreneur, in practice, had no real opportunity to conduct activities based on their own initiative, free will or enterprise. Essentially, the right to private ownership was so narrowed that, ultimately, it could be considered to exist only as an exception.

To safeguard property rights, vindication and negatory claims were provided (Articles 59–61). However, former owners whose property had been expropriated under revolutionary law or transferred to the ownership of workers before 24 August 1922 had no right to reclaim the property (Note to Article 59). Therefore, regardless of the grounds for property deprivation in the early years of Soviet power, former owners had no chance of its return. To protect the right to state ownership, unlimited vindication was applied (Article 60).

Some civil law scholars recognised the existence of a separate institute of possession.[60] However, these were purely theoretical constructions, as Soviet legislation did not provide for the possibility of possessory protection.

The section of the Civil Code 'Obligational Law' in structure and logic resembled the corresponding provisions of Book Two of the German Civil Code (BGB). There were also many similarities in the content of these codes as well, with particular emphasis to contractual obligations. In particular, the conditions, procedures and the timing of contract conclusion, as well as the various types of contract, were defined in detail. As a means of securing contractual obligations, penalties (Articles 141–142) and advance payments (Article 143) were mentioned in the second chapter of this section of the Code. Notably, the conceptual approach to resolving this issue mirrored that of the BGB: the norms on pledge were included under property rights; penalties and advance payments were classified under the general categories of obligational law (more precisely, general provisions on contracts); and guarantees were listed among specific types of contracts. The

60 Kompaniyets, 1927; Venediktov, 1948.

content of the corresponding norms is also broadly similar (with the exception of 'concisely').[61]

Inheritance was possible both by law and by will, allowing certain freedom in testamentary dispositions (but with restrictions on the circle of heirs by will, requirements to comply with certain conditions in their selection and the compulsory portion).

When evaluating the first Civil Code of the Ukrainian SSR, it should be noted that while regulating relations in a society that fundamentally denied the existence of private law, it simultaneously reflected the influence of bourgeois private legislation, primarily the BGB, and through it, Roman private law.

Simultaneously, the Soviet state reserved the right to adjust the regulation of any relations without resorting to legislative changes. For this, there were effective 'instruments' such as Articles 1, 4 and 30 of the Civil Code, as well as Paragraph 5 of the Resolution of the Central Executive Committee of the Ukrainian SSR of 16 December 1922, 'On the Enforcement of the Civil Code of the Ukrainian SSR', which provided for an expansive interpretation of the Civil Code 'in cases where it is necessary to protect the interests of the workers' and peasants' state and the working masses'.[62] This created significant opportunities for subjective justice, which was evolving at that time and existed practically until the collapse of the USSR.[63]

Finally, it should be emphasised once again that the civil codes of the Soviet republics were practically copies of the Civil Code of the RSFSR.

4. Civil Code of the Ukrainian SSR of 1963

After the abolition of the NEP,[64] the provisions of the Civil Code of the Ukrainian SSR (as well as those of other republics) became outdated. Specifically, the Code contained institutions that no longer existed in the Soviet Union in the 1930s (for example, Article 52 mentioned private property; Part III, Chapter X referred to various types of societies; and Article 15's recognition of private institutions as legal entities, etc.). Consequently, the question of a new codification of civil law arose.

Reflecting the broader trend of reducing the independence of republics, Article 14 of the 1936 Constitution of the USSR vested the authority to issue the Civil Code under the competence of the Soviet Union. Discussions on these issues

61 Landkof, 1948, p. 378; Civil Code of the Ukrainian SSR.
62 Sobraniie uzakonenii, 1922, p. 780.
63 Chernilovsky, 1987.
64 Kulchytskyi, 1996, p. 344.

continued into the 1950s, with specific proposals put forth regarding the structure of the USSR Civil Code.[65]

After the USSR Constitution was amended in 1957, the Code was no longer referred to as the Code, but rather as the Fundamentals of Civil Legislation of the USSR and the Union Republics. This change reflects the theoretical framework that had emerged from discussions on the overall system of Soviet law in general and the concept and essence of Soviet civil law in particular.

Although disputes regarding the concept and meaning of law had been ongoing even before the adoption of the first Soviet civil codes, Soviet lawyers defined the role of civil law only after its codification in the 1920s.

After the abolition of the NEP, the consolidation of planned principles in the Soviet economy, and the growing role of law as an 'organising factor' (reflecting the influence of the Eastern tradition of law), these disputes lost their relevance. The theory of a single economic law, which was conceived as a set of rules governing economic relations in Soviet society, became dominant. The term 'civil law' was removed from the curriculum and remained in scientific circulation only in its historical sense.[66]

The term was revived at the first meeting of legal scholars in 1938, which sparked discussions on civil law and the concept of the USSR Civil Code. The participants concluded that civil law rules can regulate relations in the spheres of production and circulation; the subject of civil law encompassed not only property but also personal non-property relations; and that a single method of legal regulation can be applied to govern these relations.[67]

The discussion continued until the early 1960s, focusing primarily on whether a separate Commercial Code should be created in addition to the Civil Code. Supporters of separating commercial law argued that the Civil Code and its 'accompanying' regulations should govern only relations involving citizens, while property relations between socialist organisations should fall within the domain of commercial law.[68] Civil law scholars proceeded from the expediency of unified regulation of property relations by the Civil Code, regardless of the composition of the parties involved.[69]

The Fundamentals of Civil Legislation were adopted on 8 December 1961, marking the revival of civil legislation and its adaptation to new historical conditions. They were also aimed at updating Soviet civil legislation and initiating its new general codification. The adoption of the Fundamentals did not complete the

65 Venediktov, 1954, p. 26.
66 Ioffe, no date, p. 57.
67 O predmete sovetskogo grazhdanskogo prava, 1955, p. 57.
68 Tadevossian, 1959, p. 50.
69 Gordon, 1959, p. 68; Matveev, 1961, p. 70.

codification process but merely began it – thus representing the first stage of the codification work.[70]

It was significant that during the first codification of civil legislation, the Ukrainian SSR – like other republics of the USSR – was formally free to choose a model to follow, whether the BGB or the Civil Code of the RSFSR. However, this freedom was later limited: Article 3 of the Fundamentals of Civil Legislation clearly defined the model to be followed. The civil codes of the union republics could not include provisions that contradicted the Fundamentals. They could develop and supplement the Fundamentals, but only to the extent that the regulation of a certain type of legal relationship did not fall within the competence of the USSR. As a result, the content of the Fundamentals was fully incorporated into the Civil Code of the Ukrainian SSR, which was adopted on 18 July 1963.

The main changes involved a renewal of both the content and spirit of the Code's provisions. In its general part, alongside the liberalisation of certain norms (for example, the de facto enshrinement in Article 4 of the Civil Code of the Ukrainian SSR of a principle known since Roman private law – 'Everything which is not prohibited by law is permitted'), some restrictions were actually strengthened. Article 5 of the Code strictly regulated the consequences of abuse of rights, establishing that civil rights were protected by law only when exercised in accordance with their purpose in a socialist society during the period of communist construction. At the same time, citizens and organisations were required not only to comply with the law but also respect the rules of socialist coexistence and the moral principles of a society building communism.

It is evident that this created broad opportunities for judicial discretion – although such discretion had to be based clearly on 'socialist legal consciousness'. Moreover, this discretionary scope was even broader than that granted by Article 1 of the 1922 Civil Code of the Ukrainian SSR, since the new provision applied not only to the exercise of property rights but also to personal non-property rights. The right of ownership was the only property right that survived in Soviet civil law. After the abolition of private property, the changes in the country's economic system, and the adoption of the new USSR Constitution, the classification of property forms was revised. The Code recognised the existence of socialist property and personal ownership of property by citizens intended to meet their material and cultural needs (Articles 87, 88). Article 89 of the Civil Code contained a definition of the concept of the right of operational management, although its essence was not disclosed.

The rules governing obligations predominated in the Soviet civil codes, particularly the Civil Code of the Ukrainian SSR of 1963. Changes to the system of obligations were influenced by multiple factors, notably the strengthening of command principles in the economy, the increasing role of planning, and the

70 Ioffe and Tolstoy, 1962, p. 4.

restriction of the parties' will and discretion in so-called economic contracts. Overall, the system of obligations of the CC of the Ukrainian SSR of 1963 in general remained largely traditional (except for the provisions related to strengthening of public law principles).

The absolute innovations of the Civil Code were the sections on copyright, the right to discovery and inventive rights, which previously had been regulated outside the scope of the Civil Code of the Ukrainian SSR of 1922.[71] Segregating these rules into special sections marked a further departure from the pandect system of civil law, reflecting the logical evolution of the Soviet civil law system.

Interesting transformations occurred in inheritance law. While the Civil Code of the Ukrainian SSR of 1963 marked a step 'away from Roman and bourgeois civil law' in regulating property rights and contractual obligations, inheritance, on the contrary, drew closer to those traditions in several respects. It can be assumed that the Soviet state focused its main legal efforts on ensuring legal regulation of the planned national economy, where the remnants of 'capitalist relations' were largely eliminated by the 1930s. Instead, relations involving citizens remained largely marginalised (especially after the liquidation of private property). Therefore, some provisions of Roman and bourgeois private law were adopted, provided they did not contradict the socialist concept of allowing the possibility of succession in law.

Assessing the overall outcomes and trends in the codification of civil law in the Ukrainian SSR in the 1960s, it can be concluded that along with the increased incorporation of public law principles into civil law, and ongoing efforts to develop an original system of Soviet civil law, there was also a partial, indirect and subtle adoption of some provisions and ideas of Roman private law, as well as the acculturation of elements of Western European law.[72]

5. Fundamentals of Civil Legislation of the USSR of 1991

The Fundamentals of Civil Legislation of the USSR of 1961, the civil codes of the Union republics adopted in the 1960s, and related regulations were designed to regulate property relations in a planned socialist economy. In general, the civil legislation of the Ukrainian SSR of 1960–1989 was characterised by the extensive introduction of public law principles into the domain of civil law. Without detracting from the achievements of Soviet civil law thought, in particular, national civil law, where such prominent scholars as M.Y. Baru, S.I. Vilnyansky, M.V. Gordon, S.N. Landkof, V.P. Maslov, G.K. Matveev, O.A. Podoprygora, A.O. Pushkin, and others worked, it should be recognised that Soviet civil law as a branch was

71 SZS USSR, 1928, p. 246.
72 Kharitonov and Kharitonova, 2020, p. 214.

actually in decline, being reduced to a set of civil legislative acts and their commentary and interpretation. In the second half of the 1970s, the USSR began to lose momentum, the national economy began to decline, and the economic slowdown and stagnation significantly impacted other areas of society.[73] In addition, Soviet ideologues were confronted with 'Eurocommunism', which emerged as a system of views within the largest communist parties in the capitalist world, breaking away from dogmatism, fanatical ideology and intellectual narrowness.

At the Plenum of the Communist Party of the Soviet Unio Central Committee in March 1985, Perestroika, a new economic and social policy aimed at overcoming the crisis, was proclaimed, which was planned to be implemented using the capabilities of the existing social system.

This policy required legislative support and relevant theoretical research. Therefore, in the 1980s and early 1990s, the USSR turned to universal values such as 'civil society', 'the rule of law', 'individual sovereignty', 'private law' and 'market relations'. In this context, Ukrainian legal scholars examined law as an element of civilisation, exploring issues such as the legal status of an individual, the relationship between the individual and the state, the growing social and personal value of law, democratisation of society and the strengthening of the rule of law (M. I. Kozyubra, M. P. Orzikh, P. M. Rabinovych, M. V. Tsvik, etc.). The political thesis regarding the transformation of law from socialism to post-socialism emphasises a turn towards the individual, the establishment of post-socialist 'civil property', among others (although the proposed system of property forms – public, collective, personal – remained similar to the one that existed before).[74]

In the early 1990s, significant progress was made in defining the foundations of the property institute, aligning it more closely with the ideas of the Western legal tradition. In studies of the legal aspects of relations between the individual, the state and society, human (citizen) rights were given prominence. It was emphasised that legal developments must advance not only from society to the individual, but also from the individual to society. The author analyses the legal prerequisites for the economic independence of an individual and examines the category of entrepreneurship, a concept that was largely absent from Soviet legal science. Simultaneously, there is a tendency in Soviet law to interpret entrepreneurial law as an updated economic law, accompanied by efforts to advance these relations beyond the scope of civil law regulation.[75] This position has been criticised (Matveev, 1992), yet the debate between 'civilists' and 'economicists' continued. Scholars also began exploring the issues of social protection of the individual in the context of establishing the rule of law and transitioning to a market

73 Gorbachev, 1988.
74 Mocherny, Dolishnyi, and Chernyak, 1991.
75 Mamutov and Gaivoronsky, 1990.

economy, and there is a growing interest in issues of justice and the enforcement of human (individual) rights, etc.[76]

The USSR laws on enterprise, property, cooperation, etc. were adopted. However, much of the legislation was either declarative or, conversely, casuistic in nature. Proposals were made to create an all-Union Code of Laws, the USSR Economic Code, or to absorb the Civil Codes of the Union republics into the Fundamentals. However, these initiatives failed to take into account the political realities of the time, and therefore had little prospects of implementation.[77] Nevertheless, prior to the collapse of the USSR, an attempt was made to create the Fundamentals of Civil Law to preserve the legal framework for economic and social relations 'on an updated basis'.[78] The 1991 Fundamentals of Civil Legislation of the Union of Soviet Socialist Republics and the Republics[79] exemplified a recodification of Soviet civil legislation across two 'layers' simultaneously: the NEP era and the era of 'mature socialism' (albeit 'with a human face').

Since the USSR disintegrated in December 1991, these Fundamentals never came into force in Ukraine. Instead, Ukraine began developing its own legal doctrine and civil legislation. Ukrainian scholars have argued that new approaches require a new research methodology, an appeal to 'universal values' and, ultimately, the incorporation of achievements and ideas of Roman law and the Western European legal tradition in the formation of a new concept of Ukrainian civil law and codification.[80]

6. Codification of civil law in independent Ukraine

After Ukraine declared its independence, the legislative acts of the USSR and Ukrainian SSR remained in force to the extent that they did not contradict Ukrainian legislation. The Civil Code of the Ukrainian SSR of 1963 continued to remain in force almost in full. At the same time, the range of subjects of civil law relations was expanded by the laws 'On Enterprises', 'On Business Associations', 'On Securities and the Stock Exchange', 'On the Commodity Exchange' and 'On Entrepreneurship', adopted in 1991. The law 'On Property' was also adopted, reflecting changes in views on private property and related relations in the spirit of market reforms.[81]

76 Sukhanov, 1989, p. 83; Khalfina, 1994; Kharitonov and Saniakhmetova, 1990.
77 Discussion of the draft Foundations of Civil Legislation, 1991.
78 Sadikov, 1991, p. 20.
79 Stefanchuk and Stefanchuk, 2009.
80 Kharitonov, 2008.
81 Transforming Property Relations: Materials of the Scientific and Practical Conference, 1997.

The general trend in these and other acts was a gradual return to humanistic values: providing legal protection for the sovereignty of the individual, establishing guarantees of personal rights, equalising the legal status of the individual and the state, ensuring the freedom to exercise one's rights, among others. There was also a partial acceptance of private law, reflected in the recognition of the need to protect individuals rights from violations (even by the state), and to restore private property rights.

The concept of developing Ukrainian legislation was based on new ideas about law, rooted in the concepts of civil society and the rule of law.[82] According to this concept, civil legislation could be improved only through codification, which was to be carried out based on the new Constitution of Ukraine. These issues were developed, in particular, by the group responsible for drafting the Civil Code, established by the Cabinet of Ministers of Ukraine on 24 March 1992.[83]

In the process of preparing the draft Civil Code of Ukraine, there was a debate over the advisability of creating a separate Commercial Code. Its supporters argued that the Civil Code would align with the Commercial Code, which is recognised by the legislation of many market economies.[84] Civilists argued that 'private law, which is civil law, should ... cover the legal regulation of all property market relations, including those related to entrepreneurship'.[85] Some scholars considered the creation of the Civil and Commercial Codes to be justified for practical reasons, but with a clear delineation of the subject matter of legal regulation.[86]

There was also the issue of choosing models for codification. In particular, the discussion between 'civilists' and 'economicists' is also largely related to the choice of model: 'economicists' criticised 'civilists' for their reliance on Roman law;[87] they themselves favoured Soviet models for regulating economic relations.[88] During the discussion, it was noted that Ukraine's modern legal system is closest to the Romano–Germanic system, although it is significantly different from it. Concurrently, it was observed that the incorporation of elements from Anglo-Saxon law began intensifying, an objective pattern driven by the convergence of socio-political national systems across the European continent.[89] It was emphasised that all valuable achievements contained in the civil codes of Western countries should be included in the treasury of world civilisation.[90] The adoption of Roman

82 Shemschuchenko, 1996, p. 6.
83 Ukrainian Law, 1999, p. 15.
84 Znamensky, 1992, p. 46; Mamytov, 1990, p. 17; Matveev, 1992, p. 45; Chankin, 1993.
85 Shevchenko, 1996; Kuznetsova, 1996.
86 Opryshko, 1996, p. 6; Pidopryhora, 1992, p. 12.
87 Matveev, 1992.
88 Laptev, 1987; Gayvoronsky, 1990, p. 22.
89 Shemschuchenko, 1993, p. 10.
90 Bandurka, Puschkin, and Skakun, 1993, p. 48.

private law, as the primary source of most Western codifications, was also noted.[91] Attention was further drawn to the provision on the relationship between international and national law, enshrined in the Law of 10 December 1991 on the effect of international treaties in Ukraine, should be taken into account.[92]

Despite diverse opinions, several drafts of the Civil Code of Ukraine were created. The first version of the draft Civil Code of Ukraine consisted of seven chapters: 1 – General Provisions; 2 – Property Rights; 3 – Possession and Other Real Rights; 4 – Law of Obligations; 5 – Intellectual Property Rights; 6 – Inheritance Law; 7 – Private International Law. The draft Civil Code of 20 March 1996 was broader in scope, with eight books. In particular, Book 2, Personal Non-Property Rights of Individuals, and Book 6, Family Law, were added. The approach to the regulation of real rights changed, and Book 3, 'Real Law', was devoted to them, containing a chapter regulating the general provisions of real law, as well as two sections: 'Property Rights' and 'Possession and Other Rights in Rem'. The range of relations regulated by Book 4, Intellectual Property Law, and Book 5, Law of Obligations, was expanded.

This approach was preserved in the draft Civil Code dated 26 August 1996. This version of the draft also took into account the provisions of the Constitution of Ukraine and provided more detailed regulation of various legal relationships, among other things.[93] The draft passed the first reading in the Verkhovna Rada of Ukraine in June 1997 and the second reading in 2000. Despite the renewed debate on the appropriateness of adopting the Commercial Code,[94] in December 2001 the Verkhovna Rada adopted the Civil Code in its entirety.

After the Civil Code was adopted, it became clear that its concept as a 'unified code of private law' had been undermined. In particular, a separate Commercial Code was enacted, which overlapped with the Civil Code in regulating the activities of entrepreneurs and 'subjects of economic activity', among others. Consequently, several issues were addressed from different legal perspectives, creating practical difficulties. The Family Code was also adopted separately, reflecting the persistence of the Eastern legal tradition in regulating family relations.

Nevertheless, the Civil Code of Ukraine can generally be regarded as an act of universal application, regulating all property and non-property relations that fall within the scope of private law that are not governed by special legislation. It is applied subsidiarily to relationships not regulated by legislative norms, based on the equal legal status of the parties involved.

91 Kharitonov, 1997, p. 269; Vasylychenko, 1996, p. 85.
92 Yegorov, 1992, p. 31.
93 Pidopryhora, 1996.
94 Mamytov, 2020; Kharitonov, 2020.

7. Future Trends in Legal Codification

Publications examining the significance of the 2003 Civil Code of Ukraine have highlighted its suitability as a foundation for modernisation civil legislation in response to contemporary challenges.[95] This allows lawmakers to focus on recodification rather than undertaking a full codification of civil legislation every time.

Ukraine's path towards integration with the European Community has posed a challenge, necessitating the adaptation of domestic civil legislation to align with the European concept of private law.

The Resolution of the Cabinet of Ministers of Ukraine 'On the Establishment of a Working Group on Recodification (Update) of the Civil Legislation of Ukraine' No. 650 dated 17 July 2019 and the corresponding Order of the Ministry of Justice of Ukraine No. 2771/7/1 dated 24 July 2019 resulted in taking this circumstance into account and transferring efforts in this area to the civil plane.

Since the realisation of these tasks is impossible without appropriate theoretical support, the study of ways and means of optimising the regulation of civil relations has become relevant in Ukraine. In this context, large-scale conferences were held on the problems of updating Ukraine's civil legislation in the context of its European integration aspirations: IX International Civil Law Forum 'Harmonization of Private Law Legislation of Ukraine with the Legislation of the EU Countries', Kharkiv, 11–12 April 2019; All-Ukrainian Scientific and Practical Conference 'Recodification of Civil Legislation and the System of Law of Ukraine in the Context of European Integration Processes', Odesa, 8–9 November 2019; All-Ukrainian Scientific and Practical Conference 'Shereshevsky Readings Recodification of Contract Law in the Context of Ukraine's Integration Development', Odesa, 6 December 2019. Relevant issues are also actively discussed by the legal community in the network.[96]

Several monographs have also been published, addressing both general and specific issues related to the recodification of civil legislation in Ukraine.[97]

Based on these research findings, the working group prepared proposals to introduce a number of changes to the Civil Code of Ukraine. The most important is the abolition of the Commercial Code of Ukraine, establishing the Civil Code as the sole primary source for regulating economic relations. The relevant law (On the Specifics of Regulating the Activities of Legal Entities of Certain Organizational and Legal Forms in the Transitional Period and Associations of Legal Entities) was

95 Kharitonov, 2002.
96 Spasibo-Fatyeieva, 2025.
97 Kharytonov and Kharytonova, 2019; Kharytonov and Kharytonova, 2020; Kharytonov and Kharytonova, 2021.

adopted on 9 January 2025. From the day the law comes into effect, the Commercial Code of Ukraine is deemed to have lost its validity.

Despite active debates on the legal aspects of updating Ukrainian civil legislation, issues surrounding its conceptual foundation, as well as its anthropological, 'subjective-value' aspects remain contentious. The main problems that need to be addressed in this area and the key points in the approaches to solving them are as follows:

First, the tendency to recodify is a characteristic feature of the legal existence of frontier civilisations, to which Ukraine typologically belongs. This tendency arises from the collision of legal traditions and cultures, as well as differing outlooks and values that legislators in these frontline states strive to harmonise.

Unfortunately, these factors are not always considered in states belonging to the Eastern tradition of law, which focus on a purely normative understanding of civil law, identifying it with the term 'civil law'. Meanwhile, the legal understanding, outlook and values of the population can become powerful forces either promoting or resisting the introduction of legal norms, thus achieving a positive effect of codifications and recodifications.

Therefore, when updating civil legislation, the values and related expectations of society, as well as its likely response to codification/recodification, should be considered. For example, the proposal to return the Family Code of Ukraine to the Civil Code does not sufficiently consider the distinctiveness of the national outlook. Instead, it would be necessary to update, along with the civil law, the family law of Ukraine with the appropriate adjustment to rules governing the determination of an individual's private legal status.

One of the primary objectives of updating (recodifying) civil legislation should be to define the private–legal status of the individual in a manner consistent with European standards. The existing norms of the Civil Code in this regard reflect the post-Soviet approach. Therefore, their improvement during the recodification process should be given no less attention than the regulation of contracts, among others. This approach aligns with recommendations from Western specialists for post-Soviet countries: when drafting new civil codes, these states cannot immediately reach the level of private–legal constructs that exist in Western countries, and should therefore advance gradually towards this level. Since the updating of civil legislation is proposed to be carried out primarily as a recodification, it is advisable to carefully study European concepts on this issue.

As noted by J. Smits, 'Even in the Netherlands, where with the entry into force of the new Civil Code in 1992, one could expect the clear establishment of the adopted norms, judges are given such freedom of action that these courts really shape the law. The formation of European private law by imposition does not correspond to the legal spirit of the time (Zeitgeist). Such imposition is a result of belief in centralized political power: the idea that the European Union can create

a single law characterized by legal certainty and predictability only through the introduction of identical texts…'.[98]

This suggests that the process of updating domestic civil legislation on the path to its Europeanisation is a complex and lengthy process, yet it can be entirely successful.

98 Smits, 2012, p. 219.

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