

# Philosophical Theory Changes and Civil Code Codification in Historical Perspective

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**How to cite this paper:** Zhao, S. C. (2023). Philosophical Theory Changes and Civil Code Codification in Historical Perspective. *Beijing Law Review*, 14, 1079-1089. <https://doi.org/10.4236/blr.2023.142057>

**Received:** May 21, 2023

**Accepted:** June 24, 2023

**Published:** June 27, 2023

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## Abstract

Philosophical ideas are the basis for guiding people's life and work. From a historical perspective, the codification of civil law is not only the advancement of legislative technology and legislative method, but also of legislative thought under the influence of the mainstream of contemporary philosophical ideas. From the philosophy of God to the philosophy of things and then to Marx's humanistic thought, the codification of civil law has also undergone a transformation from maintaining the rule of rulers to maintaining the economic order of private ownership to reflecting the concern for human nature.

## Keywords

Philosophy Theory, Impact, Compilation of Civil Code

## 1. Introduction

Philosophy is the concentrated embodiment of the spirit of the times, and the philosophical idea of a particular era guides the codification of civil law in that era. Throughout the history of the world, the development and evolution of philosophy have been a long process, roughly divided into three main stages (Yang & Sun, 2013). The first stage is the philosophy of God, in the social background where people often rely on the figure of God to solve a variety of problems, the "wisdom" of God has become the sole law to obey at that time. The law at this stage is only the means and tools for the ruler to rule the toiling masses. The second stage is the philosophy of things, the modern European civil code. The second stage was the philosophy of things, which profoundly influenced the formulation of modern European civil codes. With the great leap in productivity brought about by the Industrial Revolution, the "philosophy of things" represented by the mechanical materialism of the eighteenth century emphasized the possession and domination of things by human beings, which was a vigorous response

to the rapid development of productivity in the context of the Industrial Revolution and one of the reasons why both Germany and France chose to focus on the property law when formulating their civil codes. The third stage is the philosophy of man, represented by Marx's idea of humanism, which emphasizes that people are the core of society, and that it is necessary to put people first and promote their all-round development, reflecting one of the essential ideas of Marxism (Zhang, 2010). With the promulgation and implementation of China's Civil Code, in which personality rights are independently codified, the humanistic ideology of respecting, caring and loving people has gradually become the main theme of today's world.

## **2. The Philosophy of God and the Codification of the Civil Code in Historical Perspective**

Both the philosophy of God and the philosophy of things were essentially trapped by the inadequate social structure and productivity of the time, which led to insufficient social and material conditions to support the full and free development of human beings, and the philosophy of God and the philosophy of things became the main philosophical concepts that influenced the formulation of civil law in those two eras. The Middle Ages (mainly from the 5th to the 15th centuries) is a period of transition and also a special one in the history of Western philosophy. In the early Middle Ages, when the slaveholding Roman Empire fell and Western Europe entered feudal society, only Christianity was preserved and became the dominant thought of the Middle Ages.

## **3. Philosophy of God**

Medieval philosophy included the original patristic philosophy, as well as scriptural philosophy (Li, 2006). Both of them were a special period of philosophy, in which the basic questions of philosophy were less and less discussed during the Middle Ages, and were replaced by many questions of theology, such as God and man, heaven and the world, faith and reason, etc. Philosophy and science became the handmaid of Christian theology. During this period, the people's life was more about obeying the will of "God" (Tang, 2009), and the laws were made more as a tool to maintain the centralized rule of the monarch. Civil law, as a kind of private law, was somewhat insignificant in the formulation of law under the influence of the philosophy of God.

Medieval philosophy was called the philosophy of God because the philosophical thought of the Middle Ages had a constantly improving system of theological and religious ideas, which were of absolute dominance. Engels pointed out that the Middle Ages knew only one ideology, namely religion and theology. At the same time, Engels believed that the medieval worldview was essentially the worldview of theology (Zhang, 2003). First, God was the center of people's thoughts during the Middle Ages, and the germination of philosophical thought in the Middle Ages gave rise to patristic philosophy and the fideism was pro-

posed. Some patrons used the anti-rationalist and anti-rational scriptures of the Bible to propose a fideism that opposed reason and philosophy. It was believed that not only should philosophers and heretics be opposed and even persecuted, but that what they insisted on was absolute faith in religion and that there was no need for rational thought. In later developments, although not as extreme as fideism, Augustine believed that Christianity was the true philosophy and that happiness was a blessing from God. After Christian thought spread greatly and Christianity became the state religion, there is no doubt that people's thinking in the Middle Ages had begun to center on God and that all happiness in the present world was given by God. Second, Christianity had a strict system and doctrine. The representatives of God in secular society are the Pope and the Christian Church, which is itself an organization that does not exist outside of the rules. The observance of and obedience to doctrine is the absolute rule of the Christian Church, which led to the dominance of Christianity.

#### **4. The Influence of the Philosophy of God on the Codification of the Time**

During this period, the main laws of the Middle Ages were Germanic law, Roman law and ecclesiastical law. Both Germanic law and Roman law were only partially applicable and were in decline. Ecclesiastical law, although later than the first two, reached its peak in the middle and late Middle Ages and was applied in all Christian countries. As the church grew in stature and its judicial power was exaggerated, ecclesiastical law became mandatory not only for the faithful but also for the secular population. The influence of theology on ecclesiastical law is mainly reflected in the following aspects.

First, it influenced the sources of church law. Church law is mainly derived from the Bible, the Old Testament, and the New Testament, and these sources are the core of Christian thought, making some Christian ideas such as belief in God as supreme and original sin for every person from birth onward, all rooted in church law, reflecting the theology-based ideological characteristics of the time. Secondly, it influenced the nature of ecclesiastical law, which, unlike Roman and Germanic law, was a theocratic law with the will of God as its basic philosophy. It is because the early Middle Ages, when ecclesiastical law arose, was a period of theological dominance, the Christianity was growing and many countries became Christian nations. Thus, the core of ecclesiastical law shifted to the will of God, unlike before.

#### **5. The Philosophy of Things and the Codification of the Civil Code in the Historical Perspective**

Religious theology reached its heyday in the 14th to 16th centuries, and the dominance of medieval religious theology increasingly disintegrated in the late Middle Ages, with the growing economic prosperity of Europe and the advent of the Renaissance. Ideologists began to deny the authority of tradition, especially

that of the Church, and tried to explain man and the universe in their own way. Modern materialism also broke away from medieval idealism and decomposed matters to atoms, which were considered to be the origin of the world rather than the “will of God” (Xia, Wang, & Liu, 2001). At this stage, due to the great progress in productivity brought about by the industrial revolution, people had more and more goods at their disposal, and the laws made under the influence of the philosophy of God alone could no longer meet the institutional needs of the public for the trade of goods, so the German and French civil codes enacted at that time also chose to focus on property rights, devoting more attention to “things”.

## 6. The Philosophy of Things

Modern materialism spans a long time and is represented by many philosophical figures, including the 17th-century British materialists Bacon and Hobbes, as well as the 18th-century French materialism represented by the “Encyclopedists”, such as Ramsay, Elvira, etc., and the 19th-century German materialism represented by Feuerbach, who is also the mastermind of modern materialism. Among modern materialism, the French mechanical materialism of the 18th century had the greatest influence on the codification of the civil code, so this section will focus on the basic philosophical views of the French encyclopedists of the 18th century.

One of the most significant features of the French Enlightenment was the firm resistance to Christianity, especially as represented by the Church (Chen, 2013). The French Enlightenment’s main criticism was the atrocities and evils of the Church. The Church represented a kind of authority and bondage, and rightly imposed an ideological rule that people had to follow, which not only did not help to maintain the flourishing commodity economy at that time, but also was a restriction on the free and comprehensive development of human nature. Thus, the new philosophical thinking of the philosophers of the French Enlightenment replaced the influence of theology on the code and influenced the legislators of the time in the codification of the civil code.

Montesquieu’s “On the Spirit of the Law” undoubtedly had a great influence on the ideologists of his time. Montesquieu believed in the existence of these three systems of government, which are divided into democratic and aristocratic republics, monarchies and dictatorships, rather than a single dictatorship (Mo, 2021). Montesquieu was against dictatorship, which he believed was based on the fear and dread of the people. During his visit to England, Montesquieu found that his ideal system of government was a constitutional monarchy, which was based on the separation of legislative, executive, and judicial powers from each other (Guo, 2020). Montesquieu believed that political freedom could only be guaranteed if powers were separated from each other and a balance was achieved. This idea of Montesquieu also provided a relatively democratic legislative space for the later flourishing of civil law.

Later, ideologists represented by Diderot, Holbach, and Elvira believed that the separation of powers could not urge the ruler to wholeheartedly seek welfare for the people. Therefore, they believed that a parliamentary system should be used, with regular elections, where only those who had property could participate because they believed that it was property that shaped citizens and everyone who owned something in the state was concerned with the interests of that state. This made it the primary duty of a ruler to protect private property as well as the interests of citizens' property. According to Holbach, the public interest of a society has three aspects in total, namely, liberty, property, and security, which the law should guarantee for the majority of citizens. The property owned by every law-abiding citizen should be protected to some extent, therefore, some private laws regulating the exchange of property were needed to maintain the security of the property of law-abiding citizens, to protect the healthy development of the commodity economy, and to provide a peaceful social environment for the ruler.

Ideologically, the Enlightenment concerned more about the capital and focused more on protecting the possessiveness and domination of things in the commodity economy, which made it possible to give the general masses relative democracy and relative freedom in politics. However, the civil law at that time also mainly protected people's private property, i.e., it was more concerned with the material factor and did not consider the human factor too much.

## **7. The Influence of the Philosophy of Things on the Codification of the Civil Code**

The representative laws under the influence of the philosophy of things were the French Civil Code of 1804 and the German Civil Code of 1900, both of which were civil codes centered on property law (Du, 2018). With the development of the capital economy, the protection of the legitimate private property of the middle class gradually became the main task of the civil code in the 18<sup>th</sup> century. Under the influence of this philosophy, both the German Civil Code and the French Civil Code chose to focus on property rights, concentrating the provisions of the civil codes more on the possession and domination of things (Liu, 2004).

Both the French Civil Code and the German Civil Code are based on the philosophy of things, and advocate for the orderly development of the bourgeois commodity economy by putting things in the first place. Therefore, the property rights were the center of the civil code, and the "emphasis on things rather than people" was the most distinctive feature of the traditional civil code at that time. In both the German and French civil codes, there were a large number of provisions related to "things", i.e., the protection of property rights was the center, and the protection of personality rights was rarely mentioned. From the perspective of the background of that time, the French Civil Code and the German Civil Code were created against the background of the leap forward of the industrial revolution. Marx once pointed out that the industrial revolution in Eu-

rope under the bourgeoisie brought about more changes in productivity than the sum of productivity created in all previous eras (Wang & Wang, 2008), and this rapidly developing productivity put forward extremely high requirements for the system of possession and domination of property in civil law. The French Civil Code and the German Civil Code therefore chose to center on property rights, which was a strong response to the philosophy and needs of the times. However, due to the limited nature of capitalism itself, this response is more of a response to the commodity economy under capitalism, and relatively neglects the care for human nature.

This rapid development of the productive forces has further stimulated and accentuated the selfishness and expansion of the bourgeoisie, leading to the commodity of capitalism overriding human nature. Therefore, Marx pointed out very precisely that the birth of the modern bourgeoisie was premised on the plundering of property and labor. Thus, it is not difficult for us to find that, looking at the modern history of the world: before and after the introduction of the French Civil Code in 1804, Napoleon launched more than 60 wars; after the introduction of the German Civil Code in 1900, Germany launched two world wars; after the formulation of the Civil Code in Japan at the end of the 19th century, Japan launched several wars of aggression. All of these wars were predicated on the possession and plunder of property at the expense of human freedom and life. The French Civil Code and the German Civil Code were created in an era when things, rather than people, were the main focus. Therefore, it is against the normal development of things to pay too much attention to “things” and ignore human nature. Under the influence of the philosophy of things, the dignity and freedom of human beings are not given any attention and protection by the ruling class. This is also the limitation of the philosophy of things for the codification of the civil code at that time. Therefore, a civil code that meets the needs of the times and is consistent with the laws of development should not only maintain the orderly development of the commodity economy, but also not neglect the protection of human dignity and personal freedom.

## **8. Human-Centered Philosophy and Modern Civil Code Codification**

The main idea of Marx’s humanistic thought is to respect, attend, care and understand people and to pay attention to their all-round development, and Marx’s humanistic thought is gradually becoming the main theme and characteristic of the time in today’s society (Han & Li, 2020). The origin of Marx’s humanistic thought was slowly formed under the profound criticism and reflection on capitalist private ownership. Marx studied the research results of British classical political economy at that time, which in turn was inseparable from the development of British capitalism (Zhang, 2019). The development of British capitalism was characterized by the high growth of British industry, which gradually separated from agriculture and became the main mode of production, and was closely

associated with the institutions of property and society. And the correlation between industry and the system of private property was great, because industrial capitalists all owned a large amount of private property. Marx linked human labor to private property and thus criticized the capitalist system of private property (Zhang, 2021).

## 9. Marx's Humanistic Ideology

Marx's humanistic ideas are found throughout his works such as *The Philosophical Manuscripts on Economics 1844*, *The Holy Family*, *Outline on Feuerbach* and *The German Ideology* (Liu, Liu, & Wang, 2008). Marx criticized the alienation of man in bourgeois society and realized a communist society in which the essence of man and class are united by abandoning alienated labor. The main feature of Marx's humanist thought is that it is based on the study of "real man", affirming that man is the subject of social history and that social history is the result of human activity. The "free and comprehensive development of man" was the highest ideal and goal of Marx's life. Therefore, Marx's humanist thought believes that the ultimate goal of law is to protect human dignity and ensure people's free and comprehensive development, and that the protection of material things is also for the purpose of protecting people's free and comprehensive development (Zhou, 2011).

And Marx's humanist thought is concretely embodied in the unity of three theoretical levels: human free and conscious labor, the social division of labor, and surplus value.

First, Marx believed that human labor is free and conscious activity. Free and conscious labor was Marx's ideal labor, but the emergence of capitalist private ownership alienated labor and made it no longer free and conscious labor, but a means of survival. According to Marx, "alienated labor reduces autonomous labor, free labor, to a means, and thus turns human class life into a means of maintaining human physical existence" (Marx & Engels, 2002). Marx is very concerned about the social attributes of man, who is still oppressed in the growing modern society of capitalism. "The externalization of the worker in his product means not only that his labor becomes an object, an external being, but also that his labor exists outside of him as something alien to him and becomes an independent force opposed to him" (Marx & Engels, 2002). What oppresses man, according to Marx, is the objective economic force created by man's alienated labor. Communism, on the other hand, is free of oppression, in line with human nature, and is the goal of "man's return to himself", so communism became the ultimate goal of Marx's humanistic view.

The broad materialist view of man based on the division of labor is a critique of the capitalist division of labor, which believes that the realization of man's autonomous activity depends on the elimination of the division of labor. First of all, Marx believes that "the level of development of the productive forces of a nation is most clearly expressed in the division of labor of that nation" (Marx &

Engels, 1995). The division of labor determines to a certain extent the historical development of social relations as well as the productive forces, but “with the development of the division of labor there arises also a contradiction between the interests of individual persons or of individual families and the common interests of all the individuals who interact with each other” (Hu & Chen, 2008). As long as the division of labor is not freely and naturally formed, it can become a dissident force and further alienate people. Marx argues for the alienation of man in terms of the reality of the division of labor. Further, he criticizes the worship of commodities on the basis of private ownership, and the criticizing and sublating the material servitude of man is the essential content of Marx’s humanistic view.

Finally, the narrow historical materialist view with surplus value at its core is Marx’s attempt to explain the historical temporality of capitalist society. The social form of the economy is constantly changing, and civil society leads to the material servitude of man, even if it contributes to the development of society. Marx believed that the essence of capitalism is the uncompensated appropriation of the recognized surplus value by the capitalists, revealing the false nature of the “human rights, freedom, equality, and democracy” that capitalism boasts, while the “comprehensive development of man” is the fundamental goal of Marx’s scientific view of man. The fundamental goal of Marx’s scientific view of human beings is to “achieve the all-round development of man. In a communist society, human social relations are not “dependent on people” or “dependent on things”, but are based on the “free and conscious activity and association of people” to achieve the free development of human beings.

## **10. The Influence of Marx’s Humanist Ideas on the Codification of the Civil Code**

In the capitalist society, the dependence on things and the pursuit of wealth have led to the codification of laws mainly to protect the property of the proletariat. Because the focus is on “things,” the rights and interests of the proletariat without wealth cannot be protected at all. In the Marxist perspective, the focus shifted from “things” to “persons”. Capitalism’s focus on “things” has led to the alienation of human beings, so society should move toward the goal of communism. It is the goal and ideal of communism to achieve human freedom and development for all, and to make human labor “free and conscious”. Society is the sum of human relations, and human beings, as the subjects of society, should not only be guaranteed the rights and interests of their natural attributes, but also the rights and interests of their socio-historical attributes, under the guidance of Marx’s humanistic ideology.

In the middle of the last century, human society began to develop a trend from property-centered one to one centered both on property and human beings. This shift was brought about by the gradual reduction of people’s demand for things due to the development of productive forces, who gradually began to



pursue humanity, which is one of the reasons for the rise of personality rights in private law. When productivity reached a certain level, people's material life began to be satisfied, then it seemed inevitable that they will pursue spiritual freedom, humanity and dignity. This is also the concentrated embodiment of Marx's humanistic thought on the pursuit of human's free and comprehensive development. And the objects of civil rights include personality elements, things, acts, etc. Therefore, setting up personality rights and property rights are both the protection of certain rights of civil subjects, and there is no substantial difference (Jiang, 2016). Not only the new Civil Code of the Netherlands responds positively to the right of personality, China's Constitution and National Human Rights Action Plan also respond positively to this new spiritual need. The separation of the personality rights as a new distinct part in the Chinese Civil Code and the protection of personal information in Article 111 are positive responses to the people's need for a better material and spiritual culture in this era.

Over the past few years, the Chinese civil law community has been quietly shifting regarding the value of civil code codification. First, more than a decade ago, Chinese textbooks still held the traditional view of the civil code, that the civil law is a legal code that regulates the property and personal relationships of civil subjects, but now the textbooks have unanimously changed to "the civil law is a legal code that regulates the personal and property relationships of civil subjects," placing personal relationships before property relationships. Secondly, in the process of codifying the General Principles of the Civil Law, both the draft proposed by experts and the draft produced by the Law Commission of the National People's Congress put personal relations before property relations, which also reflects the legislator's consideration of the order of personal relations and property relations in the codification of the Civil Code.

The rise of personality rights is a fundamental change in the civil code after World War II, and a primary symbol of the transition of civil codes from traditional to modern. What is the biggest change in such a transition? It is the emergence of personality rights. Therefore, I believe that the civil code of the twenty-first century should be a civil code containing both property rights and personality rights, and not one only centered on property rights like the French Civil Code and the German Civil Code. Therefore, Articles 109 and 110 of the Chinese Civil Code have detailed provisions on personality rights.

A modern civil code should build a rights system centered on property rights and personality rights. But how to construct this dual system of rights? This requires that the codification of the civil code should include a separate part on personality rights. If the personality rights are not provided in a separate part, the duality of property rights and personality rights will not be clearly reflected. At the same time, in terms of structure of order, that the personality right is placed before property right, corresponds to Article 2 of the General Principles of the Civil Law that the Civil Law is a law regulating the personal and property relations of civil subjects. The personal relationship comes first, and the property relationship comes second. In addition, this is also an oath to the world: in to-

day's people-oriented society, human personality, life, freedom and dignity are more important than property. This also reflects the core socialism values. Whether to center on a single property right or to build a dual center on both personality and property is an important milestone to distinguish the traditional civil code from the modern one, and also an important milestone of whether China as a big state can lead the world in civil legislation.

## 11. Conclusion

To sum up, philosophical concepts have not only led to the development of society but also influenced the codification of the civil code in an imperceptible way. Whether it is the philosophy of God, the philosophy of things or the philosophy of man, all are one of the main factors influencing the formulation of civil law in the social context of the time. The formulation of civil codes in each period was a vigorous response to the philosophical ideas and needs of the time. However, both the philosophy of God and the philosophy of things have their own limitations. Whether as a mere tool to maintain the rule or as a stabilizer to protect the orderly development of the commodity economy, the codification of the civil code, rather than merely consider a single factor, should consider the overall situation and build a balanced dual structure of rights that protects relations of individuals and property. A qualified civil code needs to coordinate the overall situation, not only to maintain the orderly development of the commodity economy, but also to focus on respecting, attending, and caring people, and reflecting the respect and protection of personality in civil law.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

## References

- Chen, T. T. (2013). "Wonders of Modern and Ancient Times": The Earliest Model and Enlightenment of Chinese Literature Going to the World. *Journal of Anhui University (Philosophy and Social Sciences Edition)*, 37, 44-51.
- Du, F. (2018). *On the Protection of Human Rights in the Compilation of China's Civil Code*. Southwest University of Political Science and Law.
- Guo, X. Y. (2020). On the Political Form and Dynamics of the "England Regime" under Montesquieu's Writings. *History of Political Thought*, 11, 126-153 & 200.
- Han, X. P., & Li, W. J. (2020). Interpretation of Ethical Economic Thoughts in "1844 Economic and Philosophical Manuscripts". *Shandong Social Sciences*, No. 3, 111-116.
- Hu, Y. Z., & Chen, S. F. (2008). Interpretation of the Thought of Division of Labor in "German Ideology". *Inheritance*, No. 10, 40-41.
- Jiang, F. X. (2016). Analysis and Solution of the Theoretical Dilemma of Propertization of Personality Right and Personalization of Property Right. *Jurists*, No. 2, 15-26.
- Li, Z. Y. (2006). The Growth of Roman Law in the Middle Ages. *Global Law Review*, No. 1, 80-92.
- Liu, J. W. (2004). On the Compilation Thought and System of the Civil Code. *Law Journal*, No. 2, 17-19.

- Liu, Y. L., Liu, Y. L., & Wang G. X. (2008). On the Evolution of Marx's Philosophical Ontology. *Journal of Hebei Engineering University (Social Science Edition)*, No. 1, 39-41.
- Marx & Engels (1995). *The Complete Works of Marx and Engels* (Vol. 1, p. 68). People's Publishing House.
- Marx & Engels (2002). *The Complete Works of Marx and Engels* (Vol. 3, pp. 58, 268). People's Publishing House.
- Mo, W. M. (2021). The Synergetic Relationship between Reason and Faith in Montesquieu's Enlightenment Thought. *Journal of Fudan University (Social Science Edition)*, 63, 58-68.
- Tang, M. G. (2009). New Progress and Development Trend of Domestic Research on Medieval Philosophy since the Reform and Opening-Up. *Theory Monthly*, No. 7, 38-41.
- Wang, J. M., & Wang, A. G. (2008). The Green Vision of Red Classics—Social Justice and Ecological Justice in the Communist Manifesto. *Journal of Suzhou University (Philosophy and Social Science Edition)*, No. 5, 5-9.
- Xia, D. J., Wang, J., & Liu, B. G. (2001). On Truth Containing False—Also on the Interpenetration of Truth and False. *Journal of Xuzhou Institute of Education*, No. 4, 29-32.
- Yang, Z., & Sun, Y. (2013). The Contemporary Value of Our Civil Code. *Seeking Truth*, 48, 75-94.
- Zhang, F. H. (2010). An Analysis of the Theoretical Origin of "People-Oriented"—Reading "Excerpts from Important Discussions of the Scientific Outlook on Development". *China Publishing Journal*, No. 13, 61-63.
- Zhang, W. X. (2003). *Marxist Jurisprudence* (p. 3). Beijing Higher Education Press.
- Zhang, X. (2019). The Main Connotation and Times Value of "Das Kapital". *Journal of the Party School of Nanchang Municipal Committee of the Communist Party of China*, 17, 2-6.
- Zhang, X. Q. (2021). Western Marxism from the Perspective of the History of Marxist Philosophy. *Academics*, No. 4, 35-40.
- Zhou, X. (2011). Discussion on the Theoretical Basis of Marxist Theory of People-Oriented Thought. *Modern Communication*, No. 8, 118-119.