



Foreword

*Joachim Zekoll**

Good morning! I want to welcome you to Davis as this year's program chair, a post with a nice title but thankfully not involving much labor. This is so, in part, because of the able assistance of Pat Borchers and Ugo Mattei, two other members of this group who helped me select the participants of this symposium.

Equally helpful was that I did not even have to search for a conference topic. That was already done by Fritz Juenger, who declared this meeting to be on codification in the twenty-first century. Now, we all know Professor Juenger; what we sometimes forget, however, is that his first name actually is not Fritz but Friedrich K., and that name he shares with another great German legal thinker who also pondered the question of codification 183 years ago. I mean, of course, Friedrich Karl von Savigny who, just like Friedrich K. Juenger, preferred critical discourse over blind acceptance of debatable concepts. And as to the question of codification, Friedrich Karl von Savigny was very critical indeed, at a time when others perceived a pressing need for the introduction of a civil code in Germany,¹ and after Voltaire had formulated his oft-quoted motto that proved instrumental for the enactment of the French Civil Code of 1804: "*Voulez-vous avoir des bonnes lois? Brulez les votre et faites-en des*

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¹ See generally ANTON FRIEDRICH JUSTUS THIBAUT, ÜBER DIE NOTWENDIGKEIT EINES ALLGEMEINEN BÜGERLICHEN RECHTS FÜR DEUTSCHLAND [ON THE NEED FOR A GENERAL CIVIL CODE FOR ALL OF GERMANY] (1814).

novelles." ("Do you want good laws? Then burn the ones you have and make new ones.")²

With the history of Roman law on his mind, Savigny observed that law, so long as it was dynamically progressing, was never in need of codification.³ And quite derisively he added, in direct response to Mr. Thibaut who had advocated the creation of a general German civil code:⁴ "it is evident that the thought of introducing such codifications can only be attributed to the extreme decay of the law."⁵

That was 1814. Where do we stand today? Is there a similar debate? Of course there is; so similar that "it is Savigny versus Thibaut all over again" according to Reinhard Zimmermann who has coined that phrase to characterize the current controversy over the enactment of a European civil code.⁶ The attempts to unify or harmonize European law will be reviewed today by several of our panelists, and I would not be surprised if their reviews of these efforts will also be less than flattering, perhaps for reasons that differ from those Savigny advanced; then again, perhaps not.

Be that as it may, it was our objective from the very outset that this symposium be neither exclusively about Europe, nor just about private law, even though, historically, of course, these have been the main components of today's theme. If you look at the program you notice the wide array of perspectives that our participants have to offer on the subject. What is the relationship between codification and scholarship?⁷ What is the status of codification in developing countries,⁸ and what is its role

² See, e.g., FRANZ WIEACKER, A HISTORY OF PRIVATE LAW IN EUROPE 258 n.2 (Tony Weir trans., 1995).

³ FRIEDRICH KARL VON SAVIGNY, VOM BERUF UNSERER ZEIT FÜR GESETZGEBUNG UND RECHTSWISSENSCHAFT [THE VOCATION OF OUR AGE FOR LEGISLATION AND JURISPRUDENCE] 33 (1814) (Abraham Hayward trans., London, Littlewood & Co., 1831).

⁴ See generally THIBAUT, *supra* note 1.

⁵ See VON SAVIGNY, *supra* note 3.

⁶ See Reinhard Zimmermann, *Civil Code and Civil Law — The "Europeanization" of Private Law Within the European Community and the Re-Emergence of a European Legal Science*, 1 COL. J. EUROP. L. 63, 81 (1994/95).

⁷ See James R. Gordley, *Codification and Legal Scholarship*, 31 U.C. DAVIS L. REV. 735 (1998).

⁸ See Dolores A. Donovan, *Codification in Developing Nations: Ritual and Symbolism in Cambodia and Indonesia*, 31 U.C. DAVIS L. REV. 693 (1998).

in newly emerging market economies?⁹ What are the cultural implications of enacting codes?¹⁰

These are but some of the questions that our participants will address today, and I can assure you that they have not limited themselves to superficial responses. They will limit themselves, however, to twenty-five minutes presentation time, which should provide ample space for discussion. To let you appreciate their work product, I will end my remarks here, and I thank again everyone involved in this endeavor, particularly the man with the greatest input, Friedrich K. Juenger.

⁹ See Attila Harmathy, *Codification in a Period of Transition*, 31 U.C. DAVIS L. REV. 783 (1998).

¹⁰ See Pierre Legrand, *Codification and the Politics of Exclusion: A Challenge for Comparativists*, 31 U.C. DAVIS L. REV. 799 (1998).

