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Methodological Remarks on the Doctrinal Landscape Focusing on Codes: A (Re)Turn to Law as a Social Phenomenon[1]

I. Introduction

For over half a century, researchers have agreed[2] that the narrative adopted by the source of information (various actors) for the content being communicated constructs a specific framework for understanding and interpreting that information.[3] Much as a picture frame excludes some elements while focusing attention on others, so does framing. Frame analysis has been employed to study social movements, mass media, healthcare, and politics.[4] However, the analysis of the framing imposed from above

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[2] E. Goffman, *Frame Analysis: An Essay on the Organization of Experience*, Cambridge 1974, pp. 10–11, 21–24, 45.

[3] Framing understood as a way a communication source defines and constructs any piece of communicated information; see: T.E. Nelson, R.A. Clawson, Z.M. Oxley, "Media Framing of a Civil Liberties Conflict and its Effect on Tolerance," *American Political Science Review* 1997, vol. 91, no. 3, p. 567.

[4] See, for example: D.A. Snow, R.D. Benford, "Ideology, Frame Resonance, and Participant Mobilization" [in:] *International Social Movement Research*, vol. 1: *From Structure on Action: Comparing Social Movement Research Across Cultures*, eds. B. Klandermans, H. Kriesi, S. Tarrow, Greenwich 1988, pp. 197–217; D.A. Scheufele, "Framing as a Theory of Media Effects," *Journal of Communication* 1999, vol. 49, no. 1, pp. 103–122; C. Pope, S. Ziebland, N. Mays, "Qualitative Research in Healthcare: Analysing Qualitative Data," *British Medical Journal* 2000, vol. 320, pp. 114–116; H.A. Semetko, P.M. Valkenburg, "Framing European Politics: A Content Analysis of Press and Television News," *Journal of Communication* 2000, vol. 50, no. 2, pp. 93–109; G. Lakoff, *Don't Think of an Elephant! Know Your Values and Frame the Debate: The Essential Guide for Progressives*, Chelsea 2004, p. 3; K. Johnson-Cartee, *News Narrative and News Framing: Constructing Political Reality*, Lanham 2005, pp. 1–42; F. Luntz, "The Framing Wars," *The New York Times*, 17 July 2005; J.A. Kuypers, *Bush's War: Media Bias and Justifications for War in a Terrorist Age*, New York 2006, pp. 1–16; *idem*, "Framing Analysis" [in:] *Rhetorical Criticism: Perspectives in Action*, ed. J.A. Kuypers, Maryland 2009, pp. 181–204; *idem*, "Framing Analysis as a Rhetorical Process" [in:] *Doing News Framing Analysis*, eds. P. D'Angelo, J.A. Kuypers, New York 2010, pp. 286–311.

by the legislator across many different spheres of our lives through the promulgation of legislative acts remains a major absence in research,[5] despite its being a more pervasive and complex frame than, for example, those freely created by participants in political debates.

The legislator's activity manifests itself in various forms. There is no doubt, however, that codes of law have played a pivotal role in this landscape in recent centuries.[6] At the same time, they are far from being relics of the past.[7] This is not only because legal codes are systematic and comprehensive collections of rules. Above all, they constitute (at least in concept) the main point of reference in a given domain and carry a strong ideological charge behind them,[8] thus establishing a frame for a given field of social activity. Being a tool of the legislator's policy, framing in law is constructed not only by what is said in the code and how it is said, but also by what is left unsaid.[9] All these elements structure people's thinking, telling the audience (in this case, the whole of the society in which the code applies) what to think about and how to think about that issue.

All the aspects mentioned above cannot be fully captured by more formal and theoretical concepts that legal scholars tend to use, such as paradigm, or those focused solely on political dimensions for understanding social relations, like ideology. In contrast to the former, the concept of a frame can better describe the sociological dimension of the relations individuals have with the code. Compared to the latter, it also makes possible an understanding of the technical aspect of the code, which is both technical and political.

Even more critical, frame analysis also has the potential to contribute to answering the question as to what influences what is labelled by Pierre Bourdieu as habitus

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[5] Except for some aspects of tax expenditures; E.A. Zelinsky, "Do Tax Expenditures Create Framing Effects – Volunteer Firefighters, Property Tax Exemptions, and the Paradox of Tax Expenditure Analysis," *Virginia Tax Review* 2005, vol. 24, no. 4, pp. 797–834.

[6] P. Caroni, "Das entzauberte Gesetzbuch," *Schweizerische Zeitschrift für Geschichte* 1991, vol. 41, no. 3, pp. 249–273; R. Zimmermann, "Codification: History and Present Significance of an Idea," *European Review of Private Law* 1995, vol. 3, no. 1, pp. 95–120; G.A. Weiss, "The Enchantment of Codification in the Common-Law World," *The Yale Journal of International Law* 2000, vol. 25, pp. 435–532; P. Caroni, "Kodifikation" [in:] *Enzyklopädie der Neuzeit*, Bd. 6, Darmstadt 2007, pp. 855–861; J.P. Schmidt, *Zivilrechtskodifikation in Brasilien. Strukturfragen und Regelungsprobleme in historisch-vergleichender Perspektive*, Tübingen 2009, pp. 133–162; E. Hondius, "Recodification of Private Law: Central and Eastern Europe Set the Tone," *European Review of Private Law* 2013, vol. 21, pp. 897–906; D. Heirbaut, "The Sleeping Beauty Awakens: Belgium's New Law of Inheritance as a First Step in the Greatest Recent Recodification Program in Western Europe," *Zeitschrift für Europäisches Privatrecht* 2018, vol. 2, pp. 391–415.

[7] N. Irti, *L'età della decodificazione*, Milano 1979; N. Luhmann, *Das Recht der Gesellschaft*, Frankfurt am Main 1995, pp. 374–376; D. Heirbaut, "Blitzkrieg Codification: The 2020 Belgian Civil Code" [in:] *The Writing of Civil Code*, eds. M. Graziadei, L. Zhang, Singapore 2022, pp. 127–148; *idem*, *Redefining Codification: A Comparative History of Civil, Commercial, and Procedural Codes*, Oxford 2025.

[8] Cf. M. Weber, *Economy and Society: An Outline of Interpretive Sociology*, Berkeley 1978.

[9] See: P. Legrand, "Antiqui Juris Civilis Fabulas," *University of Toronto Law Journal* 1995, vol. 45, no. 3, pp. 311–362; *idem*, "The Same and the Different" [in:] *Comparative Legal Studies: Traditions and Transitions*, eds. P. Legrand, R. Munday, Cambridge 2003, pp. 240–311.

change, since this remains a significant research gap.[10] There is, however, no doubt that despite the fact that legal decisions are ostensibly structured around laws or judicial precedents, what affects law's explicit functioning in society, nonetheless, is a body of internal protocols and assumptions, characteristic behaviours, and self-sustaining values, strongly patterned by tradition, education, and the daily experience of legal custom and professional usage.[11] These social, psychological, economic, and linguistic practices influence the perception, understanding, and application of the new frame imposed by the legislator, especially when legislation is transplanted *ad hoc* from another legal order. In other words, the customs and practices operating in a given system, the education profile, the economic and social conditions, and even legal vocabulary[12] shape a given habitus. Hence, an analysis of the effect of the same piece of legislation in case studies of different habitus marked by diverse traditions provides us with a chance to illustrate how this code functions as a frame, as we can compare its framing effect in various environments and verify to what extent (if any) it actually influences a given habitus.

So what could a framework analysis of a legal act look like?

II. Framework Analysis of Legal Act Template

In this paper, I propose a template based on an analysis of the French Commercial Code of 1807 (hereafter: FCC) for the reasons presented below. However, research methodology and work plan apply to any study of other legal sources, areas of law, countries, or eras.

1. Why Is There Still so Much Research to Be Done after More Than Two Centuries?

Despite the continuous production of codes over many centuries, we have experienced several significant codification waves[13] which have set new standards, influencing the development of law and legal thought worldwide. The role of French codes issued in different domains of law at the beginning of the nineteenth century, at the behest of Napoleon Bonaparte, is undeniable. They dominated the first wave of codification, setting the tone for legislative work in many countries for the following decades or even centuries in the case of some of them. And although this area of research may seem well covered, several clear problems can be identified in the analysis of their impact undertaken so far.

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10 C. Lemert, *Sociology after the Crisis*, Oxford 1995, pp. 140–144.

11 P. Bourdieu, *Outline of a Theory of Practice*, Cambridge 1977; *idem*, "La force du droit: éléments pour une sociologie du champ juridique," *Actes de la recherche en sciences sociales* 1986, no. 64, pp. 3–19.

12 J.L. Austin, *Philosophical Papers*, Oxford 1961, especially chapters "The Meaning of a Word" and "A Plea for Excuses," pp. 23–43, 123–152.

13 F. Wieacker, *A History of Private Law in Europe*, transl. T. Weir, Oxford–New York 1995, pp. 257–408.

A. Prevailing Western European Centrality

A Western-European-centric approach is traditionally dominant in analysing the impact of French codes undertaken so far. An overview of the studies encompassing some aspects of the influence of the Napoleonic codes published to date clearly confirms this.[14] Napoleon's codes' direct or indirect impact on Central and Southeast Europe has been omitted, including those countries where they were directly received (for example, the Polish territories).[15] A few superficial paragraphs offered in studies on comparative law cannot even be accounted a general approach in this matter.[16] This traditional, politically biased approach,[17] which gives us a very limited and narrow perspective of legal history, was criticised by Thomas Duve more than a decade ago as "reconstructing only a small part of the normative universe, taking it as a whole and impeding fruitful comparison with other regions."[18] Taking this recent criticism into account, large research gaps remain that need to be addressed.

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[14] Cf., for example: J. Brissaud *A History of French Private Law*, Boston 1912; *A General Survey of Events, Sources, Persons, and Movements in Continental Legal History*, eds. F.S. Philbrick, J. Walgren, transl. J.H. Wigmore, Boston 1912; A. Esmein, *A History of Continental Criminal Procedure with Special Reference to France*, Boston 1913; R. Huebner, *History of Germanic Private Law*, Boston 1918; L. Von Bar, *A History of Continental Criminal Law*, Boston 1918; A. Engelmann, *History of Continental Civil Procedure*, Boston 1927; *The Progress of Continental Law in the Nineteenth Century*, ed. J.H. Wigmore, Boston 1918, reprinted New York 1969; R.C. van Caenegem, *An Historical Introduction to Private Law*, Cambridge 1992; O.F. Robinson, T.D. Fergus, W.M. Gordon, *European Legal History: Sources and Institutions*, 3rd ed., Oxford 2000; *European Traditions in Civil Procedure*, ed. C. Van Rhee, Antwerpen–Oxford 2005; R. Lessafer, *European Legal History: A Cultural and Political Perspective*, Cambridge 2009; P. Grossi, *A History of European Law*, Malden 2010; S. Bouabdallah, *La réception du modèle français en droit civil belge: exemple d'un transfert de droit*, Bruxelles 2014; A. Padoa-Schioppa, *A History of Law in Europe: From the Early Middle Ages to the Twentieth Century*, Cambridge 2017; B. Wauters, M. de Benito, *The History of Law in Europe: An Introduction*, Cheltenham 2017; *The Oxford Handbook of European Legal History*, eds. H. Pihlajamäki, M.D. Dubber, M. Godfrey, Oxford 2018; S. Bouabdallah, "La réception réciproque de la jurisprudence et de la doctrine dans les systèmes belge, français et luxembourgeois," *Les cahiers de Droit* 2019, vol. 60, no. 1, pp. 95–137; *Comparative Legal History*, eds. O. Moréteau, A. Masferrer, K.A. Modéer, Northampton 2019.

[15] This is especially so, given that the distinctiveness of Eastern European countries' tradition is currently illusory. For more on this topic, see: T. Giaro, "Legal Tradition of Eastern Europe: Its Rise and Demise," *Comparative Law Review* 2011, vol. 2, no. 1, pp. 1–23.

[16] For example, P. Arminjon, B. Nolde, M. Wolff, *Traité de Droit Comparé*, vol. 1, Paris 1950, pp. 242, 282, 330–331, 373–376, 410, 452; vol. 2, pp. 617–620.

[17] I. Kroppenberg, N. Linder, "Coding the Nation: Codification History from a (Post-)Global Perspective" [in:] *Entanglements in Legal History: Conceptual Approaches*, ed. T. Duve, Frankfurt am Main 2014, p. 75; for much important commentary on this subject, see: L. Brunori, O. Descamps, X. Prévost, *Pour une histoire européenne du droit des affaires: comparaisons méthodologiques et bilans historiographiques*, Toulouse 2021.

[18] T. Duve, "European Legal History – Concepts, Methods, Challenges" [in:] *Entanglements…*, p. 51.

B. The Lack of Proportionate Attention to All Areas of Law

There is no doubt that codification history focuses mainly on civil codes.[19] Criminal law codifications,[20] as well as procedural codes, have not been forgotten either.[21] In contrast, the codification of commercial law is clearly a side issue. Neither the few studies that consider some selected commercial law topics[22] nor nationally oriented works[23] can be considered to fill that gap. This is all the more disappointing when it comes to examining the effectiveness of the framework imposed by the legislator, since commercial law constitutes, in this matter, a special field. For centuries, it developed based on merchant customs and rulings of commercial courts (functioning usually within merchant guilds). It came to the attention of the state legislator very late compared to other areas of law.

The FCC was the first modern commercial code, and it was the only of its kind until German codes were issued in the second half of the nineteenth century. Despite some shortcomings, it was a tool of a defined legislative policy, significantly affecting legal systems worldwide. Even today, we can observe reminiscences of the FCC, especially in European legal discourse.[24] Yet, at the time of its bicentenary commemoration (in contrast to what happened at the observance of other Napoleonic codes) and in the most recent scholarship, its impact outside France has been left mainly unstudied.[25] The FCC caused heated debates while drafting national laws, irrespective of whether or not it was eventually considered a template for legislation. Moreover, its perception and reception in different legal systems have varied. Because of "cultural resonance"[26]

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19 I. Kroppenberg, N. Linder, "Coding the Nation…," pp. 67–99; cf., for example: D. Canale, "The Many Faces of the Codification of Law in Modern Continental Europe" [in:] *A History of the Philosophy of Law in the Civil Law World, 1600–1900*, eds. P. Grossi, H. Hofmann, Dordrecht 2009, pp. 135–183.

20 See, for example: *The Western Codification of Criminal Law*, ed. A. Masferrer, New York 2018; cf. also: R. Schröder, "Die Strafgesetzgebung in Deutschland in der ersten Hälfte des 19. Jahrhunderts" [in:] *Die Bedeutung der Wörter. Studien zur europäischen Rechtsgeschichte. Festschrift für Sten Gagnér zum 70. Geburtstag*, ed. M. Frommel, München 1991, pp. 403–420; C. Schauer, *Aufforderung zum Spiel. Foucault und das Recht*, Köln 2006; M. Luminati, "Strafrechtsgeschichte(n) der Innerschweiz im 19.–20. Jahrhundert zwischen Rückständigkeit und Fortschritt," *Signa Iuris* 2010, no. 5, pp. 115–140.

21 For example, A. Esmein, *A History of Continental Criminal…*; A. Engelmann, *History of Continental…*; *European Traditions…*; *Modèles français, enjeux politiques et élaboration des grandes textes de procédure en Europe*, eds. J. Hautebert, S. Soleil, Rennes 2006.

22 For example, J. Flume, "Law and Commerce: The Evolution of Codified Business Law in Europe," *Comparative Legal History* 2015, vol. 2, no. 1, pp. 45–83; F. Mazzarella, *Un diritto per l'Europa industriale. Cultura giuridica ed economica dalla rivoluzione francese al secondo dopoguerra*, Milan 2016.

23 For example, A.M. Fleckner, "Allgemeines Deutsches Handelsgesetzbuch" [in:] *The Max Planck Encyclopedia of European Private Law*, vol. 1, eds. J. Basedow, K.J. Hopt, R. Zimmermann, Oxford 2012, pp. 51–56; C. Petit, *Historia del derecho mercantil*, Madrid 2016.

24 A. Monti, *Per una storia del diritto commerciale contemporaneo*, Pisa 2021.

25 *Bicentenaire du Code de commerce 1807–2007*, eds. P. Bloch, S. Schiller, Paris 2007; *Bicentenaire du Code de commerce 1807–2007 – Les actes du colloque*, ed. C. Delplanque, Paris 2008; R. Szramkiewicz, O. Descamps, *Histoire du droit des affaires*, Paris 2019; F. Garnier, *Histoires du droit commercial*, Paris 2020.

26 W.A. Gamson, A. Modigliani, "The Changing Culture of Affirmative Action" [in:] *Research in Political Sociology*, eds. R.G. Braungart, M.M. Braungart, Greenwich 1987, pp. 137–177.

or "narrative fidelity,"[27] cultural context plays an essential role as a shaper of frames, and a frame has implicit cultural roots,[28] which may be read differently in a different social environment.[29]

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[27] D.A. Snow, R.D. Benford, "Ideology…," pp. 210–211.

[28] E. Goffman, *Frame Analysis*…, pp. 21–39.

[29] The backbone of my research, for reasons of feasibility, consists of three in-depth case studies: Belgium (subproject 1), Poland (subproject 2), and Germany (subproject 3). These countries serve as a theoretically informed sample that will allow some general conclusions to be drawn regarding the evolution of legal thought under the influence of the FCC, whilst likewise stressing that each case is complex and unique in its own right. All of them have experienced the implementation of the FCC. Each of them represents, however, a different strategy towards its adoption in different regional circumstances. They show, thus, varying trajectories of reaction to the code as a frame, as framing effects may occur in different populations at different rates. Cf. D. Fetherstonhaugh, L. Ross, "Framing Effects and Income Flow Preferences in Decisions about Social Security" [in:] *Behavioral Dimensions of Retirement Economics*, ed. H.J. Aaron, Washington 1999, pp. 187–209. Belgium was part of France when the FCC came into force. Its binding force, also after independence, continued to provide the main point of reference and to impose a specific tone on the evolution of legal thought. However, although discourse development took place in the shadow of the code, many of its items were replaced as the country's economic growth took place at a completely different pace from that of France. Belgium also constituted a channel for French influences on the international stage because of the phenomenon of *contrefaçons* that developed in the first half of the nineteenth century. This consisted in the publication of pirated versions of French publications at significantly reduced costs. Even though they frequently differed from the plagiarised originals, for economic reasons, Belgium was the publishing market for the whole of Europe. It influenced access to legal texts in other countries. Therefore, the analysis of the Belgian case study is crucial to verify whether the absorption of the output of French thought was direct or took place through a Belgian membrane. Katarzyna Latek explores this topic in depth in her latest article, "'Once upon a time, when French books were Belgian' – An Overview of Legislation and a Study of the Development, Reasons, and Consequences of the Institution of the Belgian *contrefaçon* for the European Legal Landscape," forthcoming. The FCC was introduced under entirely different circumstances in the backward feudal Polish territories. On the one hand, unlike other Napoleonic codes, it was adopted in the Duchy of Warsaw without opposition, being seen as a potential trigger for economic development. On the other hand, however, both general factors (tumultuous reforms of different areas of law, the difficult financial situation of the state, the upheavals of war) and factors specifically related to the code itself (lack of an official Polish translation, difficulties in understanding institutions transplanted from a foreign legal culture) delayed the greater interest of jurists in the FCC for several decades after its implementation. The quickly broken political links with France and the hegemony of other states over Polish territories did not interrupt the process of the development of Polish legal thought, both in Congress Poland and in the Free City of Kraków (this did not happen in Posen [in the Prussian area of partition], which is therefore excluded). Although the lack of political dependence on France fostered a growing interest in the achievements of other legal cultures, the tone of the development of the discourse for many decades was nevertheless set by the FCC. Although Germany, as Europe's largest codification laboratory (D. Heirbaut, *Redefining*…, p. 108), creatively pursued a direction in the field of commercial law that, almost a century after the promulgation of the FCC (with the 1897 Commercial Code), was considered to compete with the French model, the Germans were not operating in a legislative vacuum. The FCC was not only officially introduced in the Rhineland, thus marking an area with the experience of direct application, but also over the decades of work on a uniform German commercial code, which was carried out long before the unification of Germany (W. Schubert, *Entwurf eines Handelsgesetzbuchs für die Preussischen Staaten und Protokolle über die Berathungen mit kaufmännischen Sachvers-tändigen und praktischen Juristen*, Frankfurt am Main 1986; A. Kanning, *Unifying commercial laws of nation-states: Coordination of legal systems and economic growth*, unpublished Phd thesis, Maastricht 2003, pp. 46–98; J. Oosterhuis, "Convergence

C. The Lack of Comprehensive Comparative Studies on the Relationship between Code and Legal Thought

Whereas the content and structure of multiple legislative acts drafted and promulgated in relation to or imitating the French codes have been the subjects of numerous analyses and significant scholarly interest,[30] their impact on the development of legal thought has been neglected. What allows us, however, to evaluate the reactions to the introduction of a specific frame by means of a code is the analysis of the evolution of the way of thinking of participants in legal discourse. Researchers and scholars have known and quoted chosen works referring to the Napoleonic codes. Still, these have not been subjected to any critical analysis in their entirety, not to mention any comparative research. Some recent analyses have been conducted on the impact of legal scholars' writings on the content of modern codes.[31] However, the opposite, a holistic reconstruction of a code of law's impact on legal thought, has not yet been attempted.

D. The Need to Get Rid of National Subjectivism

Every researcher, raised and educated in a particular legal culture, is tainted by national subjectivism (for example, in definitions, terminology, or understanding of institutions). Despite the long historical pedigree of comparative research, which was promoted already in antiquity, for example, by Aristotle, these national subjectivisms have so far made it very difficult to come close to objective results. Using computational analysis allows us not only to obtain objectified conclusions but also to grasp correlations that can only be noticed with the application of data imaging tools. Although such tools are widely employed in political science,[32] legal historians and jurists, in general, have been reluctant to use them.[33]

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and Unification of Nineteenth Century European Commercial Sales Law," *European Review of Private law* 2013, vol. 21, pp. 911–1008), the FCC was repeatedly taken into account, even if not as a role model, certainly as a point of reference. Cf. *Entwurf eines allgemeinen Handelsgesetzbuches für Deutschland (1848/49): Text und Materialien*, ed. T. Baums, Heidelberg 1982, pp. 45–47; C. Bergfeld, "Deutschland. Handelsrecht" [in:] *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, vol. III/3, ed. H. Coing, München 1986, pp. 2853–2968; J. Kähler, *Französisches Zivilrecht und französische Justizverfassung in den Hansestädten Hamburg, Lübeck und Bremen (1806–1815)*, Frankfurt am Main 2007, pp. 253–314. Moreover, the 1897 Code's predecessor, the 1861 General German Commercial Code, followed France in many more points than is commonly believed. For more on this subject, see: A.M. Fleckner, "Allgemeines Deutsches Handelsgesetzbuch…".

30 For example, *Bicentenaire du Code*…, Paris 2007; *Bicentenaire du Code*…, Paris 2008.

31 For example, the CLLS project led by Dave De ruysscher; http://www.clls.eu/ [accessed: 5.05.2025].

32 For example, P. Leifeld, "Discourse Network Analysis: Policy Debates as Dynamic Networks" [in:] *The Oxford Handbook of Political Networks*, eds. J.N. Victor, M.N. Lubell, A.H. Montgomery, Oxford 2017, pp. 301–325. There is further discussion of this topic later in this article.

33 A. Monti, N. Hakim, "Histoire de la pensée juridique et analyse bibliométrique," *Clio@Thémis: Revue éléctronique d'histoire du droit* 2018, no. 14, par. 2.

E. Intermediary Country in Legal Transplant

Implementing a code originating in one country in the territory of another is one of the key aspects of the phenomenon known as "legal transplants." Although this topic, discussed with particular intensity for several decades, seems to be thoroughly researched, it is imperative to stress that legal transplants are generally studied as direct imports from the home to the receiving country, without considering that there may have been an intermediate country.[34]

2. Research Methodology and Work Plan

A. Literature Review and Archival Study

To thoroughly reconstruct how a code (or other legal act) affected legal discourse in the selected countries, I suggest consulting the following sources:

1) Any form of publication by authors commenting on or referring to substantive or formal issues regarding the code in the form of, *inter alia*, monographs, textbooks, articles, collections of court judgments, essays, treatises, comments, diaries, press materials, and lecture notes by university professors;
2) Codification projects and reports of parliamentary debates on codification;
3) Materials from governmental bodies concerning partial reforms of the given domain of law, for example, justifications for projects and reports of parliamentary reporters (stenographic) (since the originals have not always been preserved).

Nowadays, online access to a considerable number of the historical documents, especially from the first group, significantly contributes to the overall feasibility of this endeavour.[35]

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[34] An extensive overview of the literature on this matter is provided by J.W. Cairns, "Watson, Walton, and the History of 'Legal Transplants'," *Georgia Journal of International and Comparative Law* 2013, vol. 41, no. 3, pp. 637–696; T.S. Goldbach, "Why Legal Transplants?," *Annual Review of Law and Social Science* 2019, vol. 15, pp. 583–601.

[35] In the case of our project, this is Gallica, Europeana, Koninklijke Bibliotheek online collection (Brussels), BelgicaPress, Deutsche Digitale Bibliothek, Max Planck Institute online collection, Google Books, and Federacja Bibliotek Cyfrowych. Nevertheless, to get a complete picture, relevant sources gathered in the following institutions have been studied: the National Archives in Brussels, the Royal Library of Belgium, the Central Archives of Historical Records in Warsaw, the National Library of Poland, the Princes Czartoryski Library, the Bavarian State Library (which contains an extensive collection related to commercial law) and the Leopold-Wenger-Institute for Bavarian and German Legal History (Ludwig Maximilians Universität München). Sources in the Prussian Privy State Archives (Geheimes Preussisches Staatsarchiv) in Berlin, the Archive of Baden-Württemberg, and the State Archives in Vienna have also been consulted, as few member states of the German Confederation produced their own drafts of commercial codes. These included Prussia, the southwest German states, and Austria. The Belgian Ministry of Justice library has an extensive amount of materials relating to private law as well. Research at the Max Planck Institute for Legal History and Legal Theory in Frankfurt to make use of its vast library is indispensable both for the German and Belgian cases due to substantial and sometimes unique acquisitions by Ernst Holthöfer, who worked on Belgium; E. Holthöfer, "Belgien" [in:] *Handbuch der Quellen und Literatur der Neueren Europäischen Privatrechtsgeschichte*, vol. III/1, ed. H. Coing, München 1982, pp. 1069–1165. Relevant files in the archives of Polish, Belgian, and German universities where commercial law was taught must be consulted only if needed (since both

B. Database Design and Operations

Source materials collected from the above-mentioned online collections, archives, and libraries must be transformed into machine-readable text data (OCR). This allows the creation of a database to underpin the implementation of discourse network analysis as an intermediary, not obligatory but extremely valuable step, and, finally, will permit framework analysis.

B.1. Discourse Network Analysis

Text data in machine-readable form, applicable to the software Discourse Network Analyzer 3.0.11 and the R package rDNA,[36] is indispensable for applying discourse network analysis (hereafter: DNA).

DNA is a mixed-methods technique that combines qualitative content analysis with quantitative social network analysis. It is a tool employed in political science.[37] Nevertheless, this technique can be used to study the development of actors and coalitions not only in policy debates, but also in other kinds of discussions over time, based on text data.[38] Unlike social network analysis, it allows us not only to capture the network structure but also the network content.

Actors in the discourse include organisations or individual persons. These actors make statements about solution concepts, policy instruments, issues, arguments, etc., in different arenas, which make their statements public. Worth mentioning is that being public does not necessarily mean that the statements are visible to the broader general public, but at least to an intended target audience. Therefore, not only statements officially published in the form of, for example, a commentary or an article should be used, but also materials from governmental bodies or codification commissions, as well as notes from lectures by university professors.

After annotating statements of actors in text sources, networks can be created from this structured data, such as congruence or conflict networks at the actor or concept level, affiliation networks of actors and concept stances, and longitudinal versions of these networks.[39]

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consultations with German experts and preliminary research confirm that additional inquiries in the libraries of all German universities teaching commercial law in the nineteenth century are superfluous and that consultation in the institutions mentioned above is sufficient).

[36] P. Leifeld, J. Gruber, F.R. Bossner, *Discourse Network Analyzer Manual*, 2018, https://usermanual.wiki/Pdf/dnamanual.2049511603/view [accessed: 5.05.2025].

[37] For example, P. Leifeld, S. Haunss, "Political Discourse Networks and the Conflict over Software Patents in Europe," *European Journal of Political Research* 2012, vol. 51, no. 3, pp. 382–409; P. Leifeld, "Reconceptualizing Major Policy Change in the Advocacy Coalition Framework. A Discourse Network Analysis of German Pension Politics," *The Policy Studies Journal* 2013, vol. 41, no. 1, pp. 169–198; D.R. Fisher, P. Leifeld, Y. Iwaki, "Mapping the Ideological Networks of American Climate Politics," *Climatic Change* 2013, vol. 116, no. 3, pp. 523–545; P. Leifeld, *Policy Debates as Dynamic Networks: German Pension Politics and Privatization Discourse*, Chicago 2016.

[38] P. Leifeld, "Discourse Network Analysis…," p. 307.

[39] *Ibid.* This is part of the abstract, however. The abstract is on the publisher's website and in the pre-print published online by the author, but it is not included in the book itself.

Thus, this tool is perfectly suitable for reconstructing the evolution of legal discourse within the framework imposed by the code, in which different actors (academics, legal practitioners, politicians, governmental bodies, lay practitioners, etc.) participated, since it makes it possible to decode how the structure of this empirically observable discourse can be explained by examining its underlying mechanics.[40] The resulting network data can also assist in revealing the features of the habitus operating at that time in each case study.

B.2. Framework Analysis

The distinctive feature of framework analysis (hereafter: FA), setting it apart from many other qualitative analysis techniques, is its use of a matrix output. This allows scholars to systematically analyse data by participants (authors of the statements mentioned above) and, more importantly, by detected themes.[41]

Using FA after DNA allows skipping stage 1 of the FA – familiarisation. If used independently, this phase serves to collect qualitative data and become familiar with it (as the stage's name suggests) in order to start identifying potential themes (for example, in my case: themes in commercial law such as companies, register, bookkeeping, or bills of exchange; technical aspects of the code; linguistic issues, etc.). It also helps to observe individual differences within the collected material, which can sometimes be overlooked in subsequent stages of FA. Recognising these individual differences early on enables researchers to better identify variations within and between participants,[42] which is crucial when analysing statements from jurists with different habitus.

In stage 2, the thematic framework of the analysed legal act is to be developed. This principally involves deductively detecting the themes and subthemes by referring to the code (terminology, articles, etc.). In stage 3 of Framework Analysis (indexing), the researchers take the themes and subthemes and assign a label (a short word or phrase) to each. As the outcome of this stage is a "detailed index" of the data into "manageable chunks for subsequent retrieval and exploration,"[43] researchers divide the collected material into manageable portions and label those sections with themes and subthemes developed in the previous step. A qualitative coding tool, for example, Delve, can significantly speed up the indexing process.

Identifying and indexing themes allows scholars to chart and summarise their findings (stage 4). A matrix is used to organize the data into a discernible order and confront the thematic framework developed in stage 2 with the themes and subthemes (discussion points, issues, or topics) inductively identified in the statements analysed.

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40 *Ibid.*, p. 302.

41 A. Hackett, K. Strickland, "Using the Framework Approach to Analyse Qualitative Data: A Worked Example," *Nurse Researcher* 2019, vol. 26, no. 2, pp. 8–13.

42 S. Iliffe, J. Wilcock, V. Drennan *et al.*, "Changing Practice in Dementia Care in the Community: Developing and Testing Evidence-based Interventions, from Timely Diagnosis to End of Life (EVIDEM)," Programme Grants for Applied Research, No. 3.3, Southampton 2015, pp. 583–584.

43 C. Pope, S. Ziebland, N. Mays, "Qualitative Research…," pp. 114–116.

Interpreting the data thus organized leads to a more thorough understanding of the bigger picture of a legal act as a frame for the evolution of the legal discourse in the case studies examined by exploring distinguished themes, categories, and types (stage 5: interpretation and mapping). Since stage 5 links overarching narratives back to the data, it reveals the framing effect of the legal act for different habitus marked by diverse traditions.

III. Conclusions

Our project has a unique aspect resulting from the selection of case studies.[44] The rest can, however, serve as a general template for a whole new way of looking at the law, making studies of other legal sources, areas of law, countries, and periods modelled on it possible. Not only can the effect of the framing imposed by the legislator through an act of law be analysed under varying social and economic conditions. It also makes it possible to evaluate the impact of the frame imposed by a legal act in terms of changing the existing habitus among lawyers, the evolution of which remains unexplained by researchers. The choice to assess and compare multiple cases of countries affected by a particular legal act allows us to shed light on the interconnectedness, differences, and similarities in attitudes (views) presented by different authors in several states. Digital tools help us shed national subjectivism in the interpretation of sources.

Enriching legal analysis with this perspective would be of significant importance not only in the legal field but also to social and political studies. Even more critically, when we still mainly observe a flood of old, sound (and, thus, easy) exegesis, it would (re)create an important bridge with other fields, since it allows us to return to the analysis of law as a social phenomenon, which it is, rather than merely a literary one.

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[44] Since legal transplants are generally studied as direct imports from the home to the receiving country, this will be the first study taking into account that there may have been an intermediate country. The project will also reveal the actual meaning of Belgium as an intermediary in the reception of French legal thought in the field of commercial law and the degree of its transformation through the Belgian membrane, which is overlooked by researchers focusing on France as its original country of origin. Revising this narrative by returning to actual sources is, therefore, of great importance.

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Summary

Anna Klimaszewska

Methodological Remarks on the Doctrinal Landscape Focusing on Codes: A (Re)Turn to Law as a Social Phenomenon

This paper proposes incorporating methods well-grounded in political and social sciences into legal research. It intends to offer a step-by-step application model that can be used in relation to any legal act, domain, territory or era. As we still observe a flood of exegesis in the majority

of publications, the author believes it would allow us to not only (re)turn to the analysis of law as a social phenomenon, rather than merely a literary one, but also to (re)create a bridge with other fields.

Keywords: framework analysis, discourse network analysis, code of law, legal thought, commercial law.

Streszczenie

Anna Klimaszewska

Uwagi metodologiczne dotyczące krajobrazu doktrynalnego ze szczególnym uwzględnieniem kodeksów – powrót do prawa jako zjawiska społecznego

W artykule zaproponowano włączenie metod ugruntowanych w naukach politycznych i społecznych do badań nad prawem. Celem opracowania jest przedstawienie krok po kroku modelu ich zastosowania, który można wykorzystać w odniesieniu do każdego aktu prawnego, dziedziny, terytorium lub epoki. W obliczu dominującej w publikacjach egzegezy przyjęto, że taki model pozwoliłby nie tylko powrócić do analizy prawa jako zjawiska społecznego, a nie wyłącznie literackiego, lecz także odbudować pomost między prawem a innymi dziedzinami wiedzy.

Słowa kluczowe: analiza ramowa, sieciowa analiza dyskursu, kodeks prawa, myśl prawna, prawo handlowe.