

# A Comparative Study of the Systems of the Civil Code of the People's Republic of China and the Napoleonic Code

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## Abstract

The civil code system refers to the system structure composed of systems and norms with its internal logic and combined by values with consistency, including the formal system and value system. From the viewpoint of the formal system, the *Napoleonic Code* has created a three-part structure, divided into general principles and preamble parts, and its legislative system has had a profound impact on the world. The *Civil Code of the People's Republic of China* absorbed the three-part structure of the *Napoleonic Code*, and created the first seven-part structure, with the unification of the preamble and general provisions, decomposing the traditional debt law system, and making the tort liability and personality rights into separate parts. From the value system, the *Civil Code of the People's Republic of China* provides for the basic principles of rule of law, equality and fairness on the basis of the three major principles of modern civil law proposed by the *Napoleonic Code*, and carries forward the core socialist values, thus making an important contribution to the construction of civil law discourse system with Chinese characteristics.

## Keywords

Civil code system; the *Civil Code of the People's Republic of China*; the *Napoleonic Code*; Comparative law.

## 1. Introduction

The civil code system is the structure of the system composed of systems and norms with internal logic and combined by values with consistency. [1] The civil code system includes two aspects: the formal system (external system) and the value system (internal system). [2] The formal system refers to the various parts of the civil code and the system of institutions and rules in each part, while the value system refers to the basic values that run through the civil code, including the values and principles of civil law. Influenced by Roman law, the codification movement has flourished since the 18th century, the essence of which lies in systematizing the law, making the various aspects of the law compiled together in a logical manner. Thus, systematization is the life of a code. Among the many codes in the world, the *Napoleonic Code* has undoubtedly had a profound impact on the world, and on May 28<sup>th</sup>, 2020, the *Civil Code of the People's Republic of China* was adopted at the Third Session of the 13th National People's Congress, which fully absorbed the system of the *Napoleonic Code* and formed a civil code system with Chinese characteristics, and also had an important impact on the codification of civil codes in the world. On the issue of comparing the civil code system, the academic community is more concerned with the *German Civil Code (BGB)* and the *Civil Code of the People's Republic of China* system, but less concerned with the similarities and differences between the *Napoleonic Code* and the *Civil Code of the People's Republic of China* system. But as a matter of fact, comparing the formal system and value system of the *Napoleonic Code* and the *Civil Code of the People's Republic of China*, it can be summarized that the *Civil Code of the*

*People's Republic of China* has taken the essence and removed the dross of the *Napoleonic Code*, which has far-reaching significance for guidance.

## 2. Comparison of the Formal Systems of the Two National Codes

### 2.1. The Formal System of the Napoleonic Code

The *Napoleonic Code* of the 18th century gained worldwide recognition and has a worldwide status in the history of modern legal system. [3] The *Napoleonic Code* is based on Justinian's *Gai Institutionum commentarii IV* and creates a three-form structure: persons, property and rights related to property, and methods of acquiring property. Specifically, its formal system has the following features.

First, as a whole, the *Napoleonic Code* has a structure from general to specific, divided into general provisions and subdivisions. Although the so-called "General Provisions" is only a preamble of 6 articles, the *Napoleonic Code* is a model of formal preamble. Its preamble is concise and not divided into chapters, but consists of six articles that provide for three issues: legal effects, rules of adjudication, and basic principles. The first three articles stipulate the legal effects. Article 1 stipulates the time of entry into force: the civil code takes effect when it becomes public knowledge, which is presumed by law according to the proximity of its location to the royal seat. This actually reflects the legislator's intention to pursue the pro-people character of the code. Article 2 stipulates that the law does not apply retroactively. Article 3 stipulates the effect of the law on people and real estate. Articles 4 to 5 stipulate the rules of adjudication, i.e., judges shall not refuse to adjudicate; judges are prohibited from invoking general rules in judicial decisions. Article 6 is a matter of fundamental principle: parties may not agree to violate public order and morals. The *Napoleonic Code* provides for the principle of public order and morality in two ways: in the Preamble, the relationship between autonomy, the exercise of rights and public order and morality is regulated in general terms, and in the Contracts section, in specific terms. [4] From a contemporary point of view, although the *Napoleonic Code* lacks general principles, it does not mean that the legislators at that time did not realize the role of general principles in the overall situation and the outline, but it is more influenced by the background of the time, that is, capitalism is still in the early stage of development, there are not yet many entities of the legal system, and there is no complicated legal relations and concepts, so there is no need to establish general principles.

Secondly, from the viewpoint of the subdivisions, all three subdivisions are based on property law, and the core logic is obvious, but it also leads to some problems. For example, the *Napoleonic Code* does not have a separate subdivision for marriage and family, but puts the property of marriage and family under the third subdivision of "Access to property", which is separated from kinship and mistakenly attached to the first subdivision of "Personal law". In addition, the internal logic of the third subdivision of the *Napoleonic Code* is confusing and there is a sense of piling up. The other debt relationships it provides for, such as leases and appointments, are clearly not the means of acquiring property, and priority, mortgages and pledges are clearly within the scope of property rights, but they are only treated separately and placed in the third subdivision. On the other hand, although there is a concept of debt in the third subdivision, the system is disorganized because of the lack of understanding of the nature of debt and its relationship with the basis of each occurrence. [5]

### 2.2. Formal System of the Civil Code of the People's Republic of China

#### 2.2.1. The Unity of Preamble Parts General Principles

In comparative law, there are two most typical legislative styles of civil codes, namely, the "preamble parts" and "general principles". The former is represented by the *Napoleonic Code*, which, as mentioned above, provides for the "distribution, effect and application of the law" in

the form of legal provisions; the latter is represented by the *German Civil Code (BGB)*, which codifies the general provisions by the method of "extraction of the common cause". The first chapter of the General Provisions of the *Civil Code of the People's Republic of China*, "General Provisions", belongs to the "preamble parts" style. This chapter includes the purpose of the legislation, basic principles, objects of adjustment, sources of civil law, and the scope of application and effect, which are very similar to the logic and content of the six preambles in the *Napoleonic Code*. The chapters in this part, such as "Civil Subjects", "Civil Rights", "Civil Legal Acts", "Agency", "Statute of Limitations", etc., are codified in accordance with the "general principle" legislative technique, which can save legislative resources [6] by abstractly summarizing various specific civil legal acts. Thus, the general principles of the *Civil Code of the People's Republic of China* reflects the guiding ideology of the legislator, provides the basic principles and general principles of civil law, and implements the basic scientific principles of civil law, which is the core of the entire civil code. The general principles govern the subdivisions under it, not only to learn from precedents, but also to continue the characteristics of China's civil law legislation.

### 2.2.2. The First Created "Seven Parts"

Unlike the three-part *Napoleonic Code*, the *Civil Code of the People's Republic of China* has seven parts: General Principles, Real Rights, Contract, Personality Rights, Marriage and Family, Succession, and Liability for Tort. The latter six parts are based on the General Principles and are no longer loosely and haphazardly codified with property as the core, but form a more scientific and rigorous civil code system. Compared with the *Napoleonic Code*, the *Civil Code of the People's Republic of China* has made innovations in at least two levels.

First of all, our civil code decomposes the traditional system of debt law and sets up a unique contract centrism. The concept of debt in Roman law had a profound influence on the codification of later civil codes, and the *Napoleonic Code*, in its reform of debt law, also abstracted the general rules concerning debt and set up a unit of general rules of debt. [7] China did not follow this system in the codification of the civil code, but from the actual situation of China itself, retained part of the previous contract law, basically replacing the function of the law of debt. Although it did not follow the traditional system of debt law, "a good code should be moderately abstract enough to adjust many realistic problems, and not thus deviate from the real life it adjusts and become a purely theoretical declaration." [8] China has not codified the law of claims, if the civil code codification of claims, will cost a huge judicial costs. Therefore, it is the best choice to adapt the contract law into the civil code, both from the perspective of legislative cost and judicial practice, that is, the existing law is sufficient to solve most of the claims problems, and there is no need to codify the claims in order to force the dichotomy system of material debt. As for the special debt not belonging to the contract, the *Civil Code of the People's Republic of China* also provides in Part III: Article 468 stipulates that for a creditor-debtor relation not arising from a contract, the provisions of laws relating to such relations shall be applied; in the absence of such provisions, the relevant provisions of the General Provisions of this Book shall be applied, unless they shall not be applied based on the nature of the creditor-debtor relation. This underwriting clause makes the whole logic tighter.

Secondly, the rights of personality and tort liability are made into separate sections. The *Napoleonic Code* focuses more on the protection of property rights and freedom of contract, and ignores the protection of personality (from the perspective of personality rights). [9] In China, the independent codification of personality rights has also been a major controversial issue of personality rights. [10] Different scholars have different opinions. However, if based on the current situation, in the era of big data, everyone's information is open and transparent, and it can even be said that data is a resource for getting rich. If some unscrupulous businessmen use personal data irrationally for profit, it will cause serious harm to the personal and property rights of individuals. In real life, similar civil disputes are increasing. Therefore, it is very

necessary to establish a personality rights section to keep pace with the times. The personality rights section of the *Civil Code of the People's Republic of China* provides the basic principles and institutional framework for the protection of privacy and personal information, which is the result of the development of society into the era of big data and the development of the *Civil Code of the People's Republic of China* to highlight the protection of personality interests. [11] At the same time, the development and application of Internet technology and other science and technology will not only have an impact on personality rights, tort liability is also becoming one of the important issues in the context of this era. Therefore, the *Civil Code of the People's Republic of China* fully responds to the concerns of the times, such as the tort remedies and liability of network service providers in Article 1,195 and the tort liability for pollution of the environment and damage to the ecology in Article 1,229, both reflecting China's accurate grasp of the development trend of the times.

### 2.3. Similarities and Differences in the Formal Systems of the Two National Codes

From the viewpoint of the formal system, both national codes have a complete and independent arrangement logic, reflecting the concern and response to the hot issues of society. The *Napoleonic Code*, which was in the early stage of capitalist society at the time of its codification, is governed by a preamble and has a three-part structure featuring persons, property and rights related to property, and methods of acquiring property, which is adapted to the needs of capitalist development. Compared with the *Napoleonic Code*, the *Civil Code of the People's Republic of China* is innovative in its formal system, adopting both the "preamble parts" and "general principles" in the first created "Seven Parts". Whether from the general part to the subpart, or the general structure of each part, from the general to the specific rules system, its logic is more rigorous, effectively avoiding the redundancy of the legislation, making the legislation more efficient and simple, but also more systematic. In addition, the personality rights and tort liability part of the independent part also fully reflects the humanistic concern of the *Civil Code of the People's Republic of China* and the characteristics of keeping up with the times, effectively preventing the objectification of people. This enables the "great human beings" to be reflected in the legislation, truly realizing the "rediscovery of the human being in civil law". [12] In short, the formal system of our civil code reflects the progress of our legislative technology and highlights the characteristics of the times.

There are also some reasons why the two national codes have different formal systems. First of all, the background of the time in which the two national codes were codified was different. The 21st century, in which the *Civil Code of the People's Republic of China* was codified, was obviously more complex than that of the *Napoleonic Code*, with more complicated and emerging civil legal relationships, which led to the *Napoleonic Code* not needing to establish a "general" part to govern all the subparts, while the *Civil Code of the People's Republic of China* needs to adopt both "preamble" and "general", and needs to set up more subparts, so as to provide legal guidance for civil life. For example, on the issue of whether to build a debt law system, China is more based on national conditions, to replace the debt law system with the contract, and our previous "Contract Law" can make a smooth connection, but also to save legislative costs, to solve the practical problems. Finally, the legislative technology of the two times is very different. In this period of codification of the *Civil Code of the People's Republic of China*, there is not only the codification system of the *Napoleonic Code* to learn from, but also other systems such as the Pendleton system used in the *German Civil Code (BGB)*, so we can absorb and learn from them, and choose the more suitable one to use among many systems. This also leads to the *Napoleonic Code* to learn from the jurisprudential ladder system, and our civil code is more inclined to the Pendleton system, but with the shadow of jurisprudential ladder system.

### 3. Comparison of the Value systems of the Two National Codes

The value system is the basic value that runs through the civil code, and to make a brand new code, its basic value is bound to fit the current situation of society and solve the real problems. The *Napoleonic Code*, with property as its core, reflects the spiritual concept of capitalism; the *Civil Code of the People's Republic of China* is based on promoting the development of socialism with Chinese characteristics. Therefore, to explore the value system of the code, we should also start from the social background of the code.

From the end of the 17th century to the 18th century, France was influenced by the waves of industrial revolutions in Britain and America, and the industrial revolution broke out, which rapidly promoted the development of capitalist economy in the country. However, at that time, the political system in France was still feudal and authoritarian, and the political demands of the bourgeoisie could not be met and were in a state of oppression. In addition, there was no uniform law in France at that time, which set a great obstacle to the economic development and free trade of France. In terms of applicable law, France could be divided into two regions: the southern region of statutory law and the northern region of customary law, which was divided from the mouth of the Gironde River eastward to Lake Geneva, a line that ran roughly parallel to the Loire River. The southern statutory area is more Romanized than the north because of its proximity to Italy, while the north is based on Germanic customary law. It should be noted in particular that the legal systems of these two regions were not as strict as is generally believed, and that the southern codified regions still applied mainly customary law, except that this customary law had more of a Roman law character. [12] So much so that Voltaire said mockingly: "In this kingdom, it happens every time you go from one post to another: at each change of horses, the (applicable) law changes". [13] The convergence of multiple crises eventually led to the French Revolution and was the precursor to the creation of the *Napoleonic Code*. Therefore, it can be said that the *Napoleonic Code* is an important achievement of the bourgeois revolution, and the spirit of the times embodied in the *Napoleonic Code* is more revolutionary and rational, a blend of tradition and modernity, in order to protect the interests of the bourgeoisie's rule. [14] The spirit of freedom, equality, development of capitalist economy and the search for unity embodied in it is an indispensable part of its value system. The three principles of modern civil law established by it - the sanctity of ownership, freedom of contract and liability for negligence - still influence the codification of civil codes in various countries.

The background of the *Civil Code of the People's Republic of China* is very different from that of the *Napoleonic Code*, which also affects the value system of the Code. The *Civil Code of the People's Republic of China* was formulated in the new development stage, and the formulation of the civil code is of great significance in promoting the comprehensive rule of law, accelerating the construction of a socialist rule of law state, developing the socialist market economy system, adhering to the people-centered development ideology, safeguarding people's rights and interests in accordance with the law, promoting the development of China's human rights, and the modernization of the national governance system and governance capacity. [15] Therefore, on the basis of the value system of the *Napoleonic Code*, the *Civil Code of the People's Republic of China* considers the changes of the times, adapts to the development requirements of socialism with Chinese characteristics, and places more emphasis on people-oriented. Among the legal principles in the General Provisions, they stipulate the basic principles of rule of law, equality, voluntariness, fairness, honesty, public order and morality, civilization, and harmony. They are highly consistent with the core values of socialism, [16] constituting a unique value system of the civil code, upholding and promoting the development of socialism with Chinese characteristics.

## 4. Conclusion

To sum up, the *Civil Code of the People's Republic of China* has absorbed the essence of the system of the *Napoleonic Code*, forming a unique system of seven compilations, which has greatly promoted the academic and practical development of China's civil law. Through comparison, it can be seen that China did not choose to go mostly to borrow the *Napoleonic Code* system in the end, mainly because the social basis and the values of the times are different, and the codification of our civil code is in a more complex relationship of the times, which can no longer use the simple contents of private property and individualism as the core codification style. That is, the national conditions are different and it is necessary to incorporate more considerations. However, from another point of view, comparing the similarities and differences of the two civil codes will help to clarify the future direction of our civil code from the perspective of comparative law studies, so as to address the concerns of the people based on the background of the times and the needs of the people, to serve the people, and to build self-confidence. It is vital to clarify that the codification system of our civil code should not be a copy of the codification system of other countries, but should build a unique codification system of our own. At the same time, it is undeniable that the *Civil Code of the People's Republic of China* will still face inevitable risks and challenges in the future, and there is still a long way to go in building a civil law discourse system with Chinese characteristics, so the study of comparative law will always be a booster for the *Civil Code of the People's Republic of China* to move steadily and far. Any great civilization is an inclusive civilization, but we cannot lose our uniqueness by being inclusive. This means that we have to reshape the subjectivity of our own civilization, strengthen the academic and theoretical research of civil code, promote the development of civil law discourse system with Chinese characteristics, and learn from others.

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