

FRENCH CIVIL LAW IN RELATION TO FOREIGN LEGAL SYSTEMS (LE DROIT CIVIL FRANÇAIS EN FACE DES SYSTÈMES JURIDIQUES ÉTRANGERS) IN THE WORK OF JEAN CARBONNIER

Vlad GRIGORESCU, *Ph.D candidate*
"Al.I.Cuza" University Iași
vlad.grigorescu@student.uaic.ro

ABSTRACT

This paper explores the position of French civil law in relation to foreign legal systems through the extensive contributions of Jean Carbonnier. Historically revered as a cornerstone of European legal traditions, French civil law has profoundly influenced the legal structures of many countries. However, Jean Carbonnier's critical approach emphasizes the necessity of openness and adaptation, urging French civil law to engage with comparative law actively. The study analyzes Carbonnier's advocacy for legislative sociology and inter-legislative cooperation, which seeks to rejuvenate French civil law by assimilating beneficial elements from foreign systems. The findings highlight how this approach can prevent legal stagnation and encourage progressive evolution, reflecting broader socio-economic transformations and intercultural dialogues.

KEYWORDS: *french civil law, comparative law, Jean Carbonnier, legislative sociology, inter-legislative cooperation, legal reform*

J.E.L. Classification: K10, K12, K36, K39

1. INTRODUCTION

French civil law, deeply rooted in the Napoleonic tradition, has historically held a prominent role in shaping legal systems across Europe and the globe. The universality and stability of this legal framework have long been perceived as a benchmark of excellence. Nonetheless, globalization and cultural exchange necessitate a reassessment of even the most entrenched legal traditions. Jean Carbonnier emerges as a pivotal figure advocating for the modernization and rejuvenation of French civil law through openness, comparative legal studies, and legislative sociology. This paper aims to examine the evolving dynamics between French civil law and other legal systems, with particular attention to Carbonnier's transformative influence.

2. THE HISTORICAL SUPREMACY OF FRENCH CIVIL LAW

"One does not compare a mosquito to an elephant": an old Greek saying attributed to Zenon teaches us that comparing an elephant and a mosquito is not judicious. Can one of the oldest unified legal systems in Europe—namely, French law—be likened to, compared or even criticized by other, more recent systems with less stable traditions?

The question is legitimate. In his *"Legal Vocabulary"*, Gérard Cornu defines the science of comparative law as follows: "the comparative study of two or more legal systems emanating from different sovereignties", a definition in the strict sense, for the same author adds, "by extension,

the comparative study of two or more branches within domestic law itself (for example, French administrative law, French civil law)." This definition appears to be embraced by most modern legal dictionaries and lexicons and seems adapted to contemporary times. Maurice Planiol defines comparative law as "the quintessence of the coexistence of multiple legal branches interpreted differently" (Maurice Planiol, *Traité de droit civil* Tome I, 6th edition, LGDJ 1911), also drawing from Marcel Bréal's article "On the Origin of Words Denoting Law and Statute in Latin and Old French", published in 1883 in the *Nouvelle Revue Historique du Droit* (p.603). French legal scholars of the late 19th and early 20th centuries saw French law as the legal engine of Europe and a source of inspiration for the emerging European states of that time: Ihering even considered that all modern European legislation stems from Napoleonic law. Furthermore, Cambacérès, one of the authors of the 1804 French Civil Code, stated in one of the committee meetings that "French civil law will become one of the most important legacies ever left by France to the world" (see Laurence Chatel de Brancion (ed.), *Mémoires inédits de Cambacérès, Tome II: L'Empire*, Paris, Perrin, 1999).

The old French law, prior to the 1789 Revolution, lacked unity: divided into multiple provinces, France implicitly experienced a variety of legal rules—a phenomenon halted in the 15th century by the French kings, who ordered that each province's customs be compiled, synthesized, and organized into official works. This movement marked the end of customary law and continued during the French Revolution, which resumed and partially achieved the goal of legal unification. The 1789 Revolution also brought with it the idea of drafting a Civil Code: in 1793, Cambacérès was tasked by the Convention to draft a civil code project, but the plan failed, as the first project was not considered revolutionary enough. The task was then handed to Napoleon, who appointed a special commission. The project was submitted for voting in 1801 and came into force through the law of March 21st, 1804. This document had a tremendous impact at the time: Belgium immediately adopted it in its original form, modifying it only by the law on mortgage regimes in 1851. The Napoleonic Civil Code served as a model for most countries that implemented a civil code during the 19th century: the Netherlands (1838), Italy (1865), Romania (1865), Spain, Japan—with the exception of the Austrian Civil Code of 1811, which was not influenced by French civil law. The strength of this document is demonstrated by the relatively limited number of revisions, the last major one taking place in 2016 through the reform of the chapters on obligations.

At the beginning of the 20th century, the French positivist legal school claimed the absolute supremacy of French law. Henri Mazeaud's stance is well known, expressed in his inaugural civil law lecture at the University of Sorbonne in 1938—the same year he published his Civil Law Treaty: "There is no need to question the stability of our French civil law, which undoubtedly constitutes one of the most beautiful legacies our country has given to the world" (Henri Mazeaud, Leon Mazeaud, *Traité théorique et pratique du droit civil*, Tome I, Librairie du Recueil Sirey, 1939). The superiority of French law was also supported by constitutional law professors Léon Duguit and Maurice Hauriou, as well as much of French legal doctrine, which disregarded innovations in international legal systems—such as the notions of "reasonable fear" or "legitimate expectation" from the common law system. It was during this time and context that the young jurist Jean Carbonnier, a student at the University of Bordeaux, was educated. In 1932, he defended his doctoral thesis at the same university, titled "The Matrimonial Regime: Its Legal Nature Regarding the Notions of Society and Association", which, along with passing the aggregation exam in 1937, earned him a professor position at the University of Poitiers.

The research interests of the man who would later be known as “Dean Carbonnier” were diverse: worth mentioning is that he contributed extensively to family law and authored draft reforms of the Civil Code’s family law provisions—including the 1965 law on matrimonial regimes, the 1968 law on special protections for legally incapacitated adults, and the 1970 law on parental authority. However, due to personal religious convictions, he did not involve himself in the 1966 reform project on adoption. Toward the end of his career, the law from 2001 regarding the reform of inheritance law represented the synthetic of his life’s work, a balanced and erudite legal spirit, bringing, through the proposed innovations, a new breath of fresh air in French civil law.

The supremacy of French civil law seemed to concern Dean Carbonnier only slightly: although shaped by this notion in the 1930s, he did not advocate for an absolute monopoly of French law. As a legal sociologist, he emphasized the necessity of coexistence among legal systems, showing that despite appearances, a certain cryptophasia arises between them. A key moment reflecting his conception is his 1987 speech at the Civil Law Conference: “Before being just, should the law not first abstain from being coarse?” (*La loi civile: actes du colloque de mai 1987*, under the direction of Simone Goyard-Fabre, Presses Universitaires de Caen, 1988). What is thus understood by the idea that the law should cease to be coarse? The question remains open and the opinions are multiple – Dean Carbonnier himself stated in an interview for *La Semaine Juridique* (1995) that French law has far too often disregarded other legal systems and that precisely this disregard has been the source of errors committed over time (see, for example, *Tribunal des Conflits*, January 15, 1968, *Compagnie Air France v. Epoux Barbier*, Rec. 789, conclusions by Kahn – published in M. Long et al., *Les grands arrêts de la jurisprudence administrative*, 21st ed., Dalloz, 2017). This position seems to be followed by his disciples as well, among whom Serge Guinchard or André-Jean Arnaud:

“ *Without wishing to be too critical, it seems that the French spirit in matters of law has not always presented itself under the best auspices [...] take the example of the law of obligations – certain European countries have, for years, integrated chapters into their Civil Codes regarding abusive clauses, while we had to wait until 2016 for these to be incorporated into our Civil Code.*” (*Francesco Saverio Nisio, Jean Carbonnier: regards sur le droit et le non-droit*, Paris, Dalloz, 2005).

The issue of the chronic individualism of French law was highlighted by Jean Carbonnier during the drafting of preliminary legislative proposals aimed at reforming the provisions of the Civil Code on family law. For example, in the matter of parental authority, Dean Carbonnier carried out thorough documentation work by weighing different European legislative provisions – the same effort was made with regard to the 2001 draft reform of inheritance law. In a world in constant communication, law – be it civil, criminal, or administrative – is a field equally affected by intercultural and interprofessional interferences and transformations, such that it is very difficult for it to remain isolated or to be the absolute emanation of a legislator who looks only at the internal situation of their state, without being influenced by external circumstances or movements that may affect it directly and undeniably. “To practice law while being stubborn is the key to a guaranteed career change,” was the usual remark of Benjamin N. Cardozo, author of the famous work on the nature of the legal decision.

3. JEAN CARBONNIER AND THE TRANSFORMATION OF FRENCH CIVIL LAW

In his vast body of work, Dean Carbonnier sought to advocate for a methodology of comparative law, considering that the French civil law system cannot remain isolated and that each civil law system may, at some point, serve as a model. In recent years, the emergence of common law terms in traditional European systems – such as estoppel (translated into French as “*confiance légitime*”, i.e., legitimate trust) – has led legislators to pay more attention to legal systems in which the notion already exists (a similar notion as a legal construct already exists in Italian law). Jean Carbonnier’s vision of collaboration aimed at complementing French civil law with notions from civil legal systems that were themselves inspired by French civil law, thus achieving an enrichment rather than a deprivation of essence or a “depersonalization.” Ultimately, despite cooperation and coexistence, branches of law retain their individuality – the latter being determined by internal states inherent to each country. However, terms such as good faith, *fiducia*, filiation, or parental authority are terms that find universal application across all civil law systems. Jean Carbonnier does not condemn the civil law of his own country, nor does he deem it outdated or obsolete; rather, he subjects it to a form of moral judgment and reproaches it for remaining stuck in time, lacking a real desire to evolve. But, as its spiritual father, he does not punish it – he helps it grow. It is akin to an individual who, either out of excessive timidity or, on the contrary, from exaggerated vanity, refuses to integrate into a social group. Perhaps this is one of the reasons why one of Jean Carbonnier’s major research concerns was the investigation of the concept of legislative sociology.

Each piece of research involves the mobilization of new knowledge, most often with great complexity. Law, as a social science in perpetual motion, has not been exempt from international movements, with each state drawing inspiration from the legal systems of other countries and adapting borrowed legislative provisions to its own socio-economic context. Themed international congresses organized by international jurists' associations in various areas of civil law provide opportunities for dialogue and are a source of inspiration.

The influence of European law adds to this movement, the number of European legislative acts touching on multiple areas of civil law. Jean Carbonnier’s vision is being fulfilled: French civil law must set aside the mask of apparent supremacy and begin to absorb fresh influences. Indeed, Portalis and Cambacérès gave France a Civil Code in 1804, perhaps the most modern of its time, but morals and society evolve – and with them, so must the law. Carbonnier revisited in detail the Civil Code’s provisions on family law and especially the concept of parental authority through the law of June 4, 1970: replacing the all-powerful paternal authority with a mechanism of control guided by both parents is an example of a small legal revolution. Discarding outdated 19th-century concepts is one of the priorities of 20th-century reformist jurists. Reform may be new for French civil law, but not for other European civil law systems (the German and Austrian Civil Codes), which adopted such changes years earlier. “Authority must go hand in hand with responsibility”, declared American jurist James O. McKinsey at the beginning of the 1960s. This adage can, however, be nuanced and applied even to law itself: its authority is justified as long as the legislator assumes the responsibility to adapt the legal norm to social evolutions and complements it by introducing new elements, inspired either from neighboring systems or from the socio-economic realities of the state.

In the article entitled “*Jean Carbonnier et la sociologie législative*”, Professor Jean-François Perrin raises the following issue: does Dean Carbonnier’s legislative sociology affect only civil law, or can it also extend to other branches of law? “We must believe that everywhere in Europe, the same causes have the same effects. We can also observe that when ‘specialists’ on

a normative issue collaborate and exchange their work, in the field – not just in offices – it proves to be useful and effective. A post-legislative sociology study, conducted under the auspices of the federal government (N.A., Swiss Federal Government, regarding the divorce reform of June 1, 2000), now reveals a very high satisfaction rate with respect to this new legislation. It is thus demonstrated that if one takes the effort to implement the strategies of the legislative art conceptualized and recommended by Jean Carbonnier, the result aligns with the legislator's expectations.”

This had to be proved. Inter-legislative collaboration is fruitful when social interests and the interdependence of legal systems are weighed in the balance. A thorough analysis consequently demonstrates that the civil law system is perfected through its interconnection with other legal systems; examples abound, but we mention the introduction of the notion of legitimate trust, the estoppel, inspired by the common law system, or the tacit adoption in recent years by French courts of judicial precedents – so common in the Anglo-Saxon legal sphere.

A pioneer of this phenomenon, Jean Carbonnier demonstrated through the theory of legislative sociology the multidisciplinary of law, as well as the interdependence of legal systems whether civil, administrative, or criminal while also bringing a fresh impetus to comparative law through his insights on the need for French civil law to open up and enrich itself by reforming existing provisions and adopting new ones inspired by the law of other countries.

4. CONCLUSIONS

Jean Carbonnier's intellectual legacy has significantly influenced the progressive evolution of French civil law. His insistence on legislative sociology and comparative methodologies illustrates the benefits of intercultural and inter-legislative exchange, challenging the long-standing dominance and insularity of traditional legal frameworks. The integration of these comparative insights is critical for adapting the law to contemporary social realities and international standards. Consequently, embracing this perspective not only enriches French civil law but also reinforces its relevance and adaptability within the broader international legal community.

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