

Legal history and legal dogmatics: A study of german civil law

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Abstract

Before the implementation of the German Civil Code (Bürgerliches Gesetzbuch, BGB), the history and the dogmatics of German civil law had been closely, almost symbiotically, intertwined. The codification of civil law at the turn of the twentieth century is directly responsible for the separation of these two realms. In this context, legal positivism and the reform of legal education have played an indispensable role.

Despite increasing historicization, however, legal history remains an essential curriculum in Faculties of Law. Several authors defend, in particular, the connection between legal history and legal dogmatics. They legitimize legal history from a number of vantage points, the most prominent being the doctrine of legal evolution, the doctrine of legal models and the historical-critical school of civil law.

Since the Second World War, German research in legal history has been marked by an ever-increasing focus on Europe. As part of the debates around the approximation of private law among European countries, the comparative history of law has attracted increasing attention. This speaks again to the relevance of legal history for legal dogmatics. It proves that legal history entails more than mere knowledge of the past and can serve contemporary concerns.

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The relationship between legal history and legal dogmatics may prove particularly useful in the contexts of Mainland China and Taiwan to prevent superficial and simplistic receptions of Western law.

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