The most systematic and logically rigorous of all civil codes is the German *Bürgerliches Gesetzbuch,* which came into force in 1900, and whose structure differs from that of previous codes.[45] The first great impulse toward a civil code for all Germany came from Anthon Thibaut's pamphlet, *Über die Notwendigkeit eines allgemeinen bürgerlichen Gesetzbuchs für Deutschland,* which was published in 1814. Thibaut, as a German patriot, claimed that the civil law needed a total and rapid alteration, and that the Germans would not be happy in their civil relations othewise than if all the German governments with their united strength attempted to create a law book for all Germany. The pamphlet called forth, in the same year, the riposte of Friedrich von Savigny, *Vom Beruf unsrer Zeit fur Gesetzgebung und Rechtswissenschaft.* For Savigny, law sprang from the consciousness of the folk, or *Volk,* a cultural concept, and every codification was inorganic and thus either unnecessary, if it merely repeated existing law, or harmful, if it interrupted the growth of the law from the *Volk.* Law, in this view, was a product of history, and all of the existing law should be carefully sifted and absorbed over a period of time. Though Savigny was well aware of the diverse elements, Germanic and Roman, in the law used in Germany, both he and his followers concentrated on Roman law, whose qualities they esteemed above all.[46]

The historical school, as it has come to be called, is usually seen as a reaction against natural law. Law was not to be regarded as the fundamentally unalterable product of reason but as the offspring of varying experienced conditions. The stress nevertheless remained on Roman law not on Germanic, for three reasons. First, according to Zweigert and Kötz, Savigny accepted the contemporary aesthetic ideas which favored classicism.[47] Second, Roman law had always remained powerful and, for reasons of legal education, still prevailed over Germanic law. Third, in its bid for acceptance in practice, natural law was inevitably tamed: existing authority had to be given for propositions of law. And although there were books setting out side by side natural law, Roman law, and Germanic law, the books on natural law itself, written by scholars like Pufendorf, Thomasius, and Wolff, cited Roman law in support and seldom mentioned Germanic law. To mount an intellectual challenge to existing

45. See Wieacker, *Privatrechtsgeschichte,* pp. 468ff; Zweigert and Kötz, *Introduction,* pp. 139ff; Schwarz, "Zur Entstehung"; Koschaker, *Europa,* pp. 278ff.

46. See Wieacker, *Privatrechtsgeschichte,* pp. 392ff.

47. *Introduction,* p. 140.

law or to compete on a footing of equality, natural lawyers had to compare and contrast their ideas with those of the legal academic giant. Hence it was to be expected that a reaction against natural law should stress Roman law.

No doubt through a combination of the opposition of the historical school and others and of unfavorable political circumstances, the codification of German law was delayed. An early outstanding work of Savigny, his *Recht des Besitzes,* came out in 1803, and his *Geschichte des römischen Rechts im Mittelalter* began to appear in 1815. In 1839 was published the first volume of his *System des heutigen römischen Rechts.* With his colleagues and followers, Savigny was thus organizing the concepts of Roman law and showing their systematic later development and even their contemporary working. Georg Friedrich Puchta (1798–1846) showed views quite similar to those of Savigny in his *Gewohnheitsrecht* —of which the first volume appeared in 1828, the second in 1837—and in his *Lehrbuch der Pandecten* and *Cursus der Institutionen.* Bernhard Windscheid (1817–1892) is remembered for his *Lehrbuch des Pandektenrechts,* which first appeared in 1862 and whose seventh edition, the last prepared by the author, came out in 1891. During this same period three great scholars devoted to the history of German law emerged: K. F. Eichhorn (1781–1854), Jacob Grimm (1785–1863), and Georg Beseler (1809–1888).

The most striking feature of the *BGB,* where it parts company with the existing tradition of codification, is its structure, above all in the existence of the *Allgemeiner Teil,* the "general part." The *BGB* is in five books. book 1, the general part, is divided into seven sections: persons, things, legal transactions, periods of time, prescription, exercise of rights (self-defense and self-help), and the giving of security. Book 2 is the law of obligations, book 3 is the law of things, book 4 is family law, and book 5 is succession. The general part does not set out general rules or basic principles but contains provisions on institutions that are common to much of private law, such as capacity, juristic persons, persons of limited capacity, classes of things, and periods of time. Nothing corresponding to the general part appears in the Roman sources, and at first sight it would seem that a general part is out of place in a system deriving from Roman law. Yet in fact it is a marked feature of the books of *Pandektenrecht* which emerged from the university teaching of Roman law. The earliest work to show the typical modern Pandect system, by G. H. Heise in 1807, is actually called *Grundriss eines Systems des gemeinen Civilrechts zum Behuf von Pandecten-Vorlesungen* ("Outline of a System

of the Common Civil Law as an Aid to the Lectures on the *Pandects*").[48] The connection with teaching the course on Pandect law is expressly stated in the preface to both Anton Thibaut's *System des Pandekten-Rechts* (1803) and Bernhard Windscheid's *Lehrbuch des Pandektenrechts* (1862–1870).[49] *Pandects* is another name for Justinian's *Digest,* and the lecture courses devoted to the *Pandects* came to deal with Roman law as it was interpreted and applied in contemporary Germany.

The history of the structure of the modern Pandect system, which is the immediate foundation of that of the *BGB* as of the Saxon civil code of 1865, has been described by A. B. Schwartz.[50] This system is a combination of the influence of natural law and Roman law; in a sense, it is actually natural law ideas working upon Roman law substance. The growth of the general part can be traced through works on natural law, pure Roman law, and on the law as applied in Germany. To a considerable extent the general part is the result of the very abstract reasoning used by natural lawyers to reach the common, basic principles of law. At the same time it is the scarcely recognisable offshoot of the division into natural law proper, to which it corresponds, and natural law "by reduction." Thus, the major difference in structure between the *Code civil* and the *BGB* is explained by the greater penetration of the civil law tradition in Germany by natural law.

In 1873 a *Vorcommission,* Precommission, was established to form an expert plan, and on its recommendation the *Erste Kommission,* First Commission, was established in 1881 to prepare a draft. The First Commission was composed of eight practitioners and three professors, among whom the leading spirits were Windscheid, the professor, and Gottlieb Planck, a practitioner. The commission worked very much in isolation, remote from other practical or academic sentiment, and their draft gave rise to a flood of protest. The language was said to be wooden, the system too doctrinaire, and the draft too remote from real life. Above all Otto von Gierke objected to the neglect of living German private law.[51] The

48. The system was actually set out earlier by Gustav Hugo in his *Institutionen des heutigen römischen Rechts* (1789), but he abandoned the approach in later editions. Hugo has a claim to be considered the founder of the historical school. See e.g. Karl Marx, "The Philosophical Manifesto of the Historical School of Law," in Marx and Friedrich Engels, *Collected Works* (London, Lawrence & Wishart, 1975), I, 203ff. Hugo seems even to have invented the term *Volksgeist.* See Wieacker, *Privatrechtsgeschichte,* p. 357n38.

49. Although Thibaut's work is earlier than Heise's, the structure of the latter prevailed. In his preface Thibaut admits that his title is odd but claims that his intention is to deal with the material of lectures on the *Pandects.*

50. "Zur Entstehung."

51. *Entwurf eines Bürgerlichen Gesetzbuchs und das deutsche Recht* (1888/89).

Zweite Kommission, Second Commission, was established in 1890 with ten permanent members and twelve unestablished members, among them the Roman law professor Rudolf Sohm, and it worked much more in public. The Second Comission had little real effect on the nature of the code. They added the famous "few drops of social oil," but their main changes were to the language. Their draft, published in 1895, was scarcely altered by the Bundesrat, and it came into force in 1900. A separate commercial code, the *Handelsgesetzbuch* (*HGB*), was promulgated in 1897, but a still earlier commercial code, *Allgemeines deutsches Handelsgesetzbuch,* dates from 1861.

The *BGB* has been enormously admired, but its direct effect on foreign civil codes has been limited, partly because it was late in the field, partly because it is so abstract. But the civil codes of Japan (1898), of the Kingdom of Siam (1924–1925), and of China were drawn mainly from German law, with the exception of family law and succession. The influence of the *BGB* on foreign codes is most clearly seen in Greece.[52] From the first half of the nineteenth century German legal scholarship was the strongest influence on Greek law, and in that country German professors taught Pandectist law. The Greek civil code was long in the making but eventually came into force in 1946. Its structure is that of the *BGB,* though the influence of the codes of Switzerland, France, and Italy can also be seen. From the late nineteenth century onward German law was also influencial in Hungary and, from 1918, in Czechoslovakia and Yugoslavia.

The law of some Swiss cantons was within the sphere of influence of the *Code civil.* The first of the German-speaking cantons to adopt a civil code was Bern (1830–1831), and this code, though founded in old Bern law, followed the *ABGB* in structure and to some extent in content. The example of Bern was followed by Luzern, Solothurn, and Aargau. A rather different creation was the civil code of Zurich, the *Zürcher privatrechtliches Gesetzbuch* (1853–1855), which was the work of Johann Kaspar Bluntschli, who had studied long in Germany and was very much in the Pandectist tradition. This model was followed in various cantons of northern and eastern Switzerland, and of all the cantonal codes it had the greatest effect on the Swiss civil code.

The division of Switzerland into numerous cantons, each with its

Anton Menger, *Das bürgerliche Recht und die besitzlosen Volksklassen* ("The Civil Law and the Propertyless Classes of the People" 1891), showing that the rules of law injured the weaker classes of society and protected the stronger, had no noticeable impact, since its stance was foreign to the existing legal tradition.

52. See Zweigert and Kötz, *Introduction,* pp. 154ff.

own law, gave rise to many problems of conflict of laws, especially in commercial law, and this led to the creation in 1881 of a partial code, the *Schweizerisches Obligationenrecht,* which was based on the *Allgemeines deutsches Handelsgesetzbuch* and on what is called the *Dresdner Entwurf,* a draft of the law of obligations which had been produced in 1865 by German professors and judges. To prepare the way for unification of cantonal law, Professor Eugen Huber was asked to produce a comparative comprehensive account of the private law of all the cantons, and even before the last volume had appeared of his *System und Geschichte des schweizerischen Privatrechts* (1886–1893), Huber was asked to prepare a draft code. The draft was available for public discussion in 1900, and the *Schweizerisches Zivilgesetzbuch* was adopted in 1907, to come into force in 1912. The code of obligations was updated, and although it is a separate federal statute with its own numbering, it is in effect a fifth book of the *Schweizerisches Gesetzbuch.* The civil code itself has a preliminary title, book 1 is the law of persons, book 2 the law of the family, book 3 successions, and book 4 real rights.

The Swiss codification has been very much praised, and for a time there was a call to adopt it in Germany. It was adopted almost in its entirety in Turkey in 1926, though there is dispute whether this is because of its merits or because the then Turkish minister of justice had studied law in Switzerland.