

		<i>Preface</i>	vii
		<i>Acknowledgements</i>	viii
		<i>Abbreviations</i>	xvi
		<b>Introduction</b>	
	I	The subject of this study	3
	I.1	The prospect of a European codification	3
	I.2	The origins of the supremacy of legislation	4
	I.3	An outline of the four codifications	5
	2	Method and structure of this study	7
	2.1	Reasons for investigating these four codifications	7
	2.2	Structure of this study	7
PART	I	<b>General Considerations on Codification</b>	
CHAPTER	I	<b>Law, Legislation and Codification</b>	
	I	The doctrine of sources of private law in the <i>Ancien Régime</i> (1550-1800)	13
	I.1	The local <i>ius civile</i>	14
	I.2	The <i>ius commune</i>	17
	I.3	Summary of the doctrine of sources of law	19
	I.4	The influence of natural law theories and the theory of climate	19
	2	The arguments for and against the introduction of a codification	23
	2.1	Codification and the formation of states: the practical-political argument	23
		a) The formation of states	23
		b) The practical-political argument for codification	26
		c) The practical-political objection to codification	27
	2.2	Codification and freedom: the political-theoretical argument	28
		a) Corporate freedom	29
		b) Civil freedom	30
		c) National political freedom	32
	2.3	Codification and the interest of legal practice: the juridical argument	34
PART	II	<b>Brandenburg-Prussia and the Austrian Monarchy</b>	
CHAPTER	2	<b>General Considerations on the Territories of the Holy Roman Empire</b>	
	I	The Holy Roman Empire of the German Nation	41
	I.1	Constitutional and governmental arrangements	41
	I.2	Proposals for codification within the framework of the Empire	42

	2	Mercantilism and cameralism	46
	3	Proposals of cameralists with regard to law reform	47
	3.1	Proposals from a general perspective	48
	3.2	The Prussian Cameralists	49
	3.3	Cameralists and the Austrian Monarchy	51
	4	Opposition to the idea of a uniform codification in the Holy Roman Empire	54
CHAPTER 3		<b>Codification in Brandenburg-Prussia</b>	
	1	Political developments in Brandenburg-Prussia	59
	2	The pursuit of a 'common law' during the reign of Frederick William I (1713-1740)	60
	2.1	The first attempts at a 'common law' (1713-1714)	60
	2.2	A renewed attempt at introducing a common law (1733-1740)	62
	3	The first attempt at codification during the reign of Frederick II	63
	3.1	The recommendations of Cocceji (1741-1746)	63
	3.2	The draft Cocceji (1746-1755)	65
	4	The first draft of the <i>ALR</i>	67
	4.1	The resolution of Frederick II to codify Prussian law	67
	4.2	The opinion of Carmer and his co-workers on the issue of legal diversity	69
	5	Responses from the public	74
	5.1	Opponents to legal unity	74
	5.2	Supporters of legal unity	75
	6	Struggle for the introduction of the <i>Allgemeine Landrecht</i> (1786-1794)	77
	7	Struggle for the provincial codes	80
CHAPTER 4		<b>Codification in the Austrian Monarchy</b>	
	1	Political developments in the Austrian Monarchy	85
	2	Genesis of the idea of a uniform law	88
	3	Prelude to a uniform codification (1753)	90
	3.1	The decision to make fundamental administrative reforms (1748)	90
	3.2	Establishment of a codification committee for the Austrian Succession States (1753)	91
	4	The work on the <i>Codex Theresianus</i> (1753-1766)	94
	4.1	The <i>Kompilationskommission</i>	94
	4.2	Renewed political debate on legal unity	97
		a) The first results (1755-1756)	97
		b) Reconsidering the reforms of Haugwitz (1760-1761)	98
	4.3	The <i>Codex Theresianus</i> (1766)	99
	5	Discussions on the <i>Codex Theresianus</i>	101

5.1	The opinion of the Council of State on the <i>Codex</i>	101
5.2	Growing opposition to a uniform codification	103
6	Codification during the reign of Joseph II (1780-1790)	106
7	Codification during the reign of Leopold II (1790-1792)	108
8	Codification during the reign of Francis II/I (1792-1811)	110
8.1	The revision of the <i>JGB</i>	110
8.2	The final phase: the completion of the <i>ABGB</i> (1796-1811)	112
	a) Proponents of a uniform codification	112
	b) The debates in the (second) <i>Hofkommission</i> (1801-1811)	114
	c) The introduction of the <i>ABGB</i>	119
PART	III	<b>France</b>
CHAPTER	5	<b>Law in an Emerging State: The Debate on Legal Unity until 1748</b>
1.1	Political developments	125
1.2	The genesis of French patriotism	126
2	The idea of legal unity in the 15th and 16th centuries	127
2.1	The official editing of the <i>coutumes</i> (1450-1550)	127
2.2	The pursuit of legal unity by official bodies (1560-1567)	129
2.3	Scientific onset of the development of a <i>droit commun français</i> (1550-1650)	130
3	Schemes for a codification in official bodies after 1650	132
3.1	The discussion on the uniformity of law during the Colbert era	132
3.2	The <i>Ordonnance civile</i> of 1667	137
4	The debate on legal unity in the first half of the eighteenth century	140
4.1	Charles-Iréné Castel abbé Saint-Pierre (1658-1743)	140
4.2	The administration's renewed attempt to achieve legal unity (1727-1747)	142
4.3	The contribution of legal scholars to the development of a <i>droit commun français</i>	144
CHAPTER	6	<b>The Debate on Legal Unity in the Second Part of the 18th Century, 1748-1780</b>
I	Innovators	149
1.1	Montesquieu: separation of powers and the rule of law	149
1.2	Voltaire and Linguet: the pursuit of political certainty	151
1.3	Rouillé d'Orfeuil	154
1.4	Rousseau: the monarchy forsaken	155
2	The old arguments	158
2.1	The interest of the state	158
2.2	The juridical argument	159
3	The Maupeou Revolution (1770-1774)	161

CHAPTER 7	<b>The Debate on Legal Unity at the Eve of the Revolution</b>	
1	The decision to summon the Estates General (1788)	165
2	Some pamphlets and essays	166
2.1	<i>Raison d'état</i> and political certainty	166
2.2	Following Rousseau	167
2.3	The juridical argument	171
3	The <i>cahiers de doléances</i> of 1789	172
3.1	Genesis and value of the <i>cahiers de doléances</i> (List of grievances)	172
3.2	The popularity of the various proposals in favour of (uniform) codification	173
3.3	The arguments used	176
	a) The juridical argument	176
	b) The political-theoretical argument	177
	c) The practical-political argument	178
3.4	Conclusion	179
CHAPTER 8	<b>Codification in a Revolutionary Era</b>	
1	The Estates General (5 May 1789-17 June 1789)	183
2	The <i>Assemblée Nationale Constituante</i>	184
2.1	The <i>Déclaration des droits de l'homme et du citoyen</i>	184
2.2	Resolution of 4 August 1789: abrogation of provincial liberties	185
2.3	The centralisation of legislative competences	186
2.4	Codification and the reorganisation of the judiciary	188
2.5	The debate on a uniform law of inheritance	189
2.6	The Constitution of 3 September 1791	192
3	Plans for a codification from the public	192
3.1	The <i>fête de la fédération</i> (Celebration of the federation)	192
3.2	Some pamphlets	194
4	The <i>Assemblée Nationale Législative</i>	195
5	The <i>Convention</i>	196
5.1	A new constitution	196
5.2	The first concrete draft of a codification	200
5.3	The Reaction of Thermidor (July 1794)	202
6	The <i>Code civil des Français</i> (1804)	204
6.1	The <i>coup d'état</i> of 18/19 Brumaire an VIII (9/10 November 1799)	204
6.2	Napoleon's decision in favour of a codification	206
6.3	The deliberations on the draft Portalis (1801-1804)	207

PART	IV	<b>The Netherlands</b>	
CHAPTER	9	<b>The Dutch Republic until the Batavian Revolution (1795)</b>	
	I	The political and administrative situation in the Dutch Republic	217
	2	The debate on codification in the period 1760-1780	218
	3	A new impetus: the rise of patriotism (1780-1795)	221
CHAPTER	10	<b>Codification in a Revolutionary Era</b>	
	I	The first year after the Revolution of 1795	227
	I.1	The debate on legal unity in pamphlets	227
	I.2	Attempts at provincial codifications in Friesland and Groningen	228
	I.3	Attempts at a national codification	230
	2	The National Assembly	232
	2.1	The first months of the National Assembly	232
	2.2	The debate in the committee for a constitution	233
		a) The federalists in the committee	234
		b) The unitarists in the committee	235
		c) The committee's letter to the National Assembly	238
	2.3	Attempts at creating a committee for a codification	239
	2.4	Deliberations on the <i>Plan van Constitutie</i>	242
	2.4.1	Departmental authority	243
	2.4.2	The problem of 'freedom': separation of powers or popular influence	244
	3	Comments on the <i>Plan</i> and the <i>Ontwerp</i> in pamphlets and magazines	246
	4	The Second National Assembly (August 1797-June 1798)	249
	5	Developments 1798-1806	251
	5.1	The committee Cras (1799-1804)	251
	5.2	The constitutions of 1801 and 1805 and the attempt to stem the tide of codification	254
	6	The <i>Wetboek Napoleon ingerigt voor het Koninkrijk Holland (WNH)</i> (1809)	255
PART	V	<b>Conclusion</b>	
CHAPTER	II	<b>Codification and the Formation of National States</b>	
	I	The <i>Ancien Régime</i> : the primacy of the practical-political argument	264
	I.1	The territories of the Holy Roman Empire	264
		a) Prussia	264
		b) The Austrian Monarchy	265

I.2	France	266
I.3	The Dutch Republic: codification in a confederation	267
2	Codification and freedom: the political-theoretical argument	267
2.1	Corporate freedom	267
2.2	Civil freedom	268
2.3	After the <i>Ancien Régime</i> : national political freedom and the revolutionary codifications	270
	a) France	271
	b) The Dutch Republic	272
3	Codification and the legal practice: the juridical argument	272
4	Conclusion	273
	<b>Epilogue</b>	276
	<i>Bibliography</i>	280
	<i>Index</i>	318