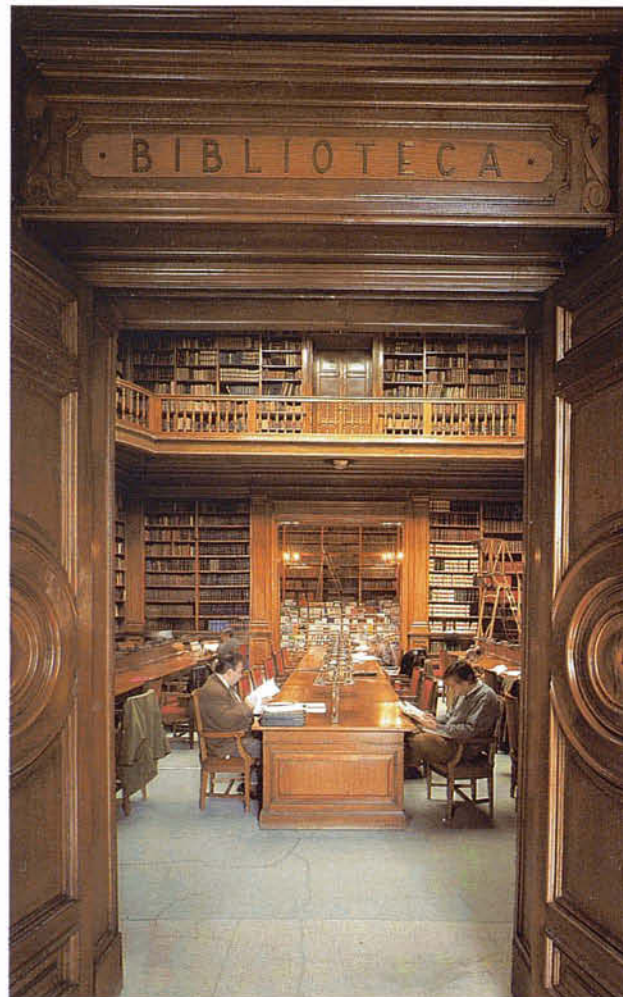




CIVIL LAW INSTITUTIONS IN CATALONIA



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THE JURIDICAL STRUCTURE THAT REGULATES THE CIVIL LIFE OF THE CITIZENS OF CATALONIA HAS BEEN ELABORATED OVER THE YEARS AND ITS INSTITUTIONS HAVE BEEN BUILT UP THROUGH EVERYDAY COEXISTENCE TO BECOME UNIQUE AND CHARACTERISTIC.

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Civil law regulates personal relations between citizens from before they are born until after they die. It is therefore one of the basic constitutive elements of a people's identity. The juridical structure that regulates the civil life of the citizens of Catalonia has been elaborated over the years and its institutions have been built up through everyday coexistence to become unique and characteristic.

The historical continuity of our legal system suffered an important setback as a result of the Decree of "Nueva Planta", drawn up in 1716 after the War of Succession; and its rehabilitation—in spite of two centuries of petitions—did not arrive until 1960, with the publication of the *Compilació de Dret Civil de Catalunya*, newly promulgated by the Catalan parliament in 1984, after being adapted to the new circumstances.

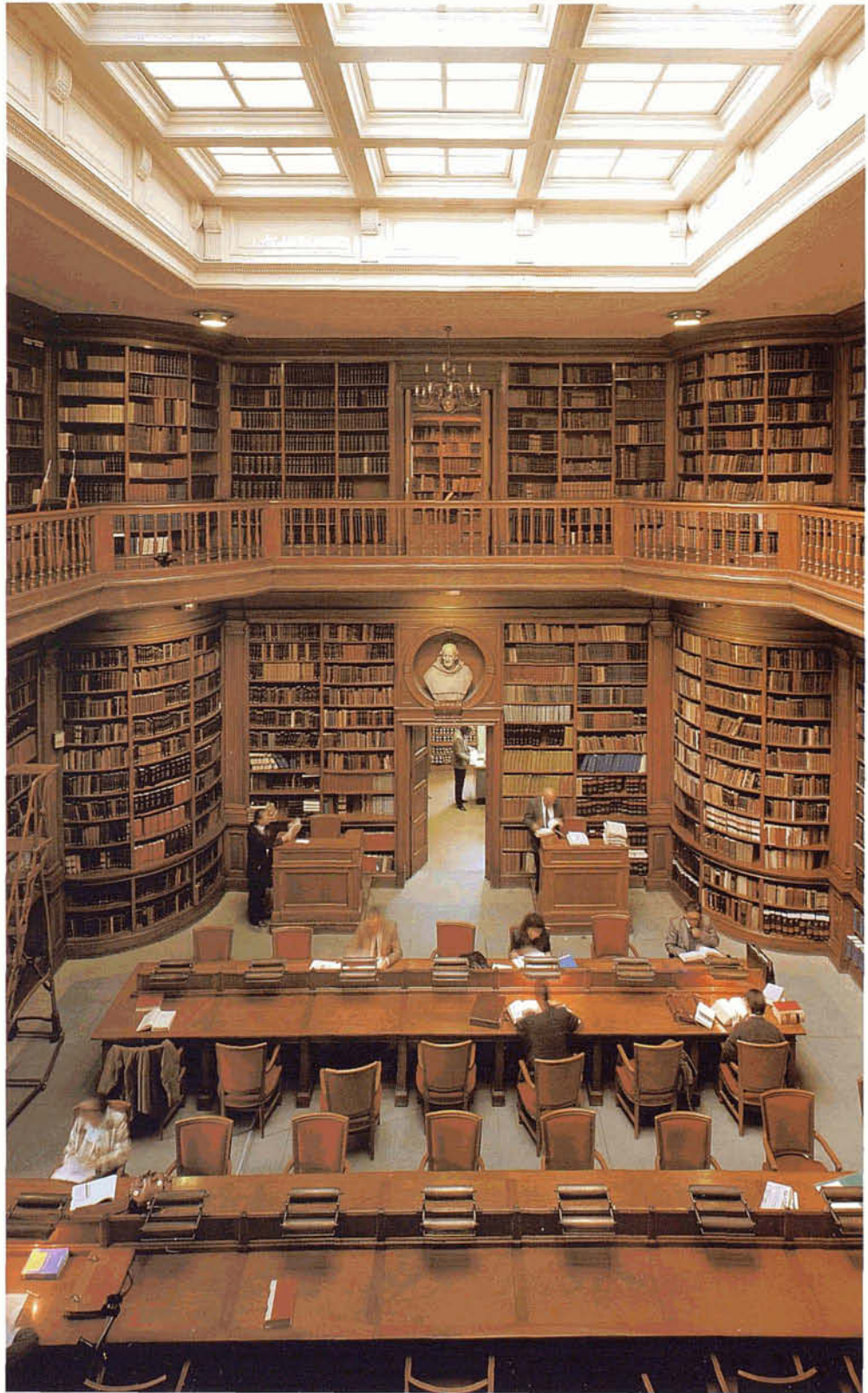
Meanwhile, in 1889, the "Codi Civil" was justly introduced throughout the Spanish state after lengthy and laborious elaboration.

The civil law that applies in Catalonia today is therefore contained in these two basic documents: first of all, the *Compilació de Dret Civil de Catalunya*, while for anything not foreseen here the precepts of the "Codi Civil" are applied.

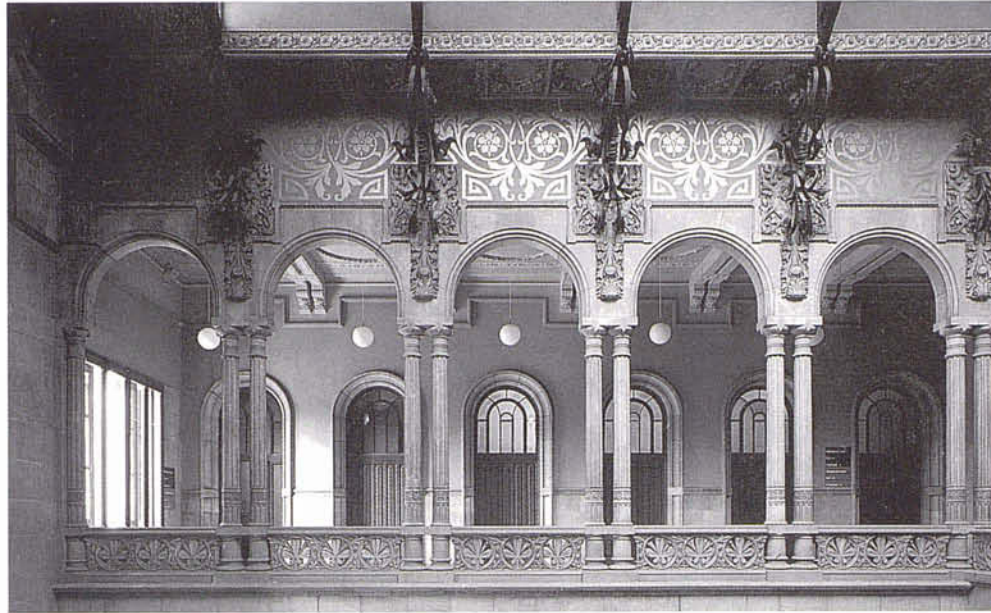
If the "Codi Civil" is a body of law drawn up and arranged according to a systematically preconceived plan, the *Compilació* is a collection of already existing laws, also drawn up in order. Our compilation of law at present consists of 344 articles arranged in four books: "De la família", "De les successions", "Dels drets reals" and "De les obligacions i els contractes i de la prescripció".

The person—individual or corporation—is the subject of rights and obligations and therefore the subject of juridical relations. First of all, then, it has to be decided who the subject of Catalan law is, which is the same as asking who is Catalan. And on this point we have to resort to the "Codi Civil", which establishes that subjection to civil law—ordinary or special—is decided by civil domicile.

Thus Catalans are: those born of Cata-



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lan parents; those who, while not born of Catalan parents, are born in Catalonia and express their wish for Catalan domicile within one year after their majority or emancipation; those who have resided uninterruptedly in Catalonia for two years and who express this wish; those who have resided in Catalonia for ten years, without a declaration to the contrary; a woman married to a Catalan, and the unemancipated children of Catalan father or mother, even if born outside Catalonia.

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The family is initiated with a legally contracted marriage and from it derives paternity and filiation, with the corresponding mutual relations. And it is precisely in the family economic régime that one of the most characteristic aspects of Catalan law appears. Catalan law does not impose any particular economic system. The subjects themselves are free to establish the rules by which they wish to be governed, according to their express wish, through the *capítols matrimoniales*, or marriage settlement, which can be granted before or during the marriage and always—a legal requirement—by public deed. If no agreement is drawn up, the *Compilació*, in keeping with a criterion of freedom, states that “the marriage shall be subject to the régime of *separació de bens*”,

by which each of the spouses maintains “the ownership, use, administration and disposition of his or her own property”.

Other institutions are also established as regards the family, such as the *donacions esponsalícies*, gifts or presents made by one of the spouses to the other on occasion of the engagement; the *dot*, or dowry, the contribution made by the wife—or her parents—to help with the expenses of the new family; the *pacte de supervivència*, by which the couple agree, at the time of purchasing goods, together or separately, that on the death of one of the two, the other becomes sole owner of the goods; the *heretament*, a uniquely Catalan provision, by which an heir is named when the marriage contract is drawn up, and the *any de plor*, which is the right of the surviving spouse when not the universal usufructuary of the predeceased’s legacy “to inhabit all of the conjugal dwelling and be maintained from the heritage of the predeceased”.

While the *heretament*, mentioned above, figures in the *Compilació* in the book on family law, thus broaching the subject of the laws of inheritance, these are more fully developed in the second book. The Catalan juridical tradition is preserved in particular in the “Dret de

successió”, and covers 180 of the 344 articles of the *Compilació*.

Our juridical ordinance maintains two especially characteristic forms of making a will: the *testament davant el rector* and the *testament sacramental*, figures which are not often made use of today. The most important institution of this field of Catalan law is that of the *hereu*, or heir: the person appointed to receive the inheritance. For centuries the heir has given a sense of continuity to family heritage in the Catalan countryside. The concept derives from Roman law and its designation is essential in the will. The *Compilació* states that the will “must necessarily contain the institution of the heir”. Alongside this is the institution of the *llegítima*, which is that part of the inheritance statutorily reserved for the children of the deceased who are not heirs. This amounts to a quarter of the inheritance at the time of death and must be distributed amongst all the *llegitimaris* plus the heir. The *llegat*, for its part, is a bequest which the testator may make to a particular individual.

Other distinctive institutions are: the *quarta vidual*, which can be granted to the spouse of the predeceased if he or she does not have sufficient financial means; the *substitucions*, which express



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the wish of the testator in designating another person should the first not come to succeed him or her, and the *fideicomisos*, by which the testator leaves his goods to another on trust, to be preserved and transmitted to a third party.

The *successió intestada* deserves a special mention. This was already provided for in the *Compilació* and modified by a recent law passed by the Catalan parliament. By this means successors are named when the deceased has not left a will.

The “Dret real” deals with the powers a person has concerning a specific object. Real estate and the derived rights, possession and usufruct are regulated by the “Codi Civil”. The *Compilació*, however, covers other institutions that still preserve distinctive features in Catalan law.

Fragmentary treatment was given to the *servituds*, and for this reason a new law has been dictated by the Catalan parliament, which improves the earlier provisions and extends them in keeping with today’s social realities. This is a “real estate law that partly assesses a property in another’s benefit”. It also covers the *cens*, which is a similar case: it is included in the *Compilació* but has been the object of modification by a recent

law in the Catalan parliament. This figure can be defined as a perpetual or temporary regular annual payment in money, which is linked to ownership of a property. There are therefore two types of *cens*: the *emfitèutic*, which is perpetual, and the *vitalici*, which is for life.

One special perpetual lease is that known as *primers ceps* or *rabassa morta*, by which the owner of the land cedes its use for vine planting as long as the first vines live.

Obligations are an important part of civil law and the “Codi Civil” governs the most representative institutions of this section. Nevertheless, the *Compilació* regulates a series of figures that are gradually going out of use, but that are still current.

Thus the *venda a carta de gràcia*, which refers to the right to redeem which the seller reserves to buy back something at sale price; the *censals*, or the obligation to pay an annual pension indefinitely to an individual or to his or her successors, by virtue of the capital received by the contracting party, and the *violaris*, or the constitution of a right to periodically receive a sum of money during the life of one or two people, in exchange for perceiving a capital or price.

It is worth mentioning the rural and farming contracts, some of which go back a long way. The *parceria* is the contract by which the property holder grants the use of the land to a farmer in exchange for payment of part of the products obtained; the *masoveria*, a contract established over the total formed by the farmhouse and the farmland belonging to it, and the *contractes d’integració*, regulated by a law passed by the Catalan parliament in 1984, whose object it is to “obtain the collaboration of livestock products for reproduction, breeding and fattening”.

Finally, the *fundacions privades* have also been the object of regulation by the Catalan parliament, by a law of 1982.

We have looked at the principal institutions of Civil Law in Catalonia, to the extent that the limited space available in these pages allows, as drawn up in the *Compilació*. As can be seen from this summary, the Catalan parliament fulfils its legislative task and draws up laws on certain matters as permitted by the Statute of Autonomy and the Constitution. These laws have the same status as those of the State, though they only hold within the territorial limits of Catalonia. ■