The rediscovery of Roman law and the emergence of classical canon law around AD 1100 marked the beginnings of the civil law tradition in Europe. Between the twelfth and eighteenth centuries, a highly sophisticated legal science of a truly European dimension was developed. Since then the different European states have developed their own national legal systems, but with the exception of England and Ireland they are all heirs to this tradition of the ius commune.

This historical introduction to the civil law tradition, from its original Roman roots to the present day, considers the political and cultural context of Europe's legal history. Political, diplomatic and constitutional developments are discussed, and the impacts of major cultural movements, such as scholasticism, humanism, the Enlightenment and Romanticism, on law and jurisprudence are highlighted. This contextual approach makes for a fascinating story, accessible to any reader regardless of legal or historical background.

Randall Lesaffer is professor of legal history and dean of the Law School at Tilburg University, the Netherlands. He also teaches cultural history at the Law School of the Catholic University of Leuven.
EUROPEAN LEGAL HISTORY

A cultural and political perspective

RANDALL LESAFFER

Translated by

JAN ARRIENS
To Sabien
# CONTENTS

_Preface_     viii

1  Introduction     1

PART I  Ancient Roman law     15

2  _Suum cuique tribuere_ (Ancient Rome, c.1000 BC–AD 565)     17
   A  Politics and the state     17
   B  Culture and the law     63

PART II  The civil law tradition     121

3  _Correctio_ (the Early Middle Ages, c.500–1000)     123
   A  Politics and the state     123
   B  Culture and the law     159

4  _Auctoritas_ (the Late Middle Ages, c.1000–1453)     192
   A  Politics and the state     192
   B  Culture and the law     235

5  _Emulatio_ (the Early Modern Age, 1453–1648)     289
   A  Politics and the state     289
   B  Culture and the law     338

6  _Ratio_ (the Modern Age, 1648–1914)     372
   A  Politics and the state     372
   B  Culture and the law     438

EPILOGUE     481

7  _Voluntas_ (the Post-Modern Age, 1914–2004)     483

_Index_     521
Over the past few decades, the process of European integration and the debate on a common private law in Europe have made their impact felt on the study of legal history at European universities. Whereas post-Roman legal history had traditionally been studied in terms of national history, now the European perspective dominates the field.

In the past twenty years, several surveys of the history of the civil law tradition have been published. This book adds to their number. In it, the historical development of civilian jurisprudence takes centre-stage. The common law tradition is dealt with in the briefest of ways, the sole purpose of its inclusion being to indicate when and where the English law has taken its own direction. The focus here is on the Mediterranean region for Antiquity and on western Europe for the centuries since. As a result of the origins of this book, the Low Countries receive some additional attention. I have decided to retain these pieces from the original Dutch version of the book because they serve to illustrate more general trends. Moreover, I am sure nobody will be harmed by learning something of the history of these lands. Scandinavia and eastern Europe are not covered.

What sets this book apart from other introductions and surveys is that it puts legal history in a broader context. A great deal of space is devoted to political and cultural history, as much in fact as to the legal developments properly speaking. It is hoped that this will make European legal history more accessible for those readers both in Europe and beyond who lack a sufficient background in general European history, and give legal developments more sense and meaning, by relating them to their context. On the other hand, this might also allow historians and other interested readers to relate legal history to a context they know better.

This book is based on the classes in legal history that I have taught at Tilburg University for almost ten years now. It unmistakably bears the traces of the fact that I have also been teaching cultural history at the Law School of the Catholic University of Leuven since 1998. The influence of my teacher and good friend Dirk van den Auweele is evident throughout.
The members of the Legal History Section at Tilburg University have all contributed to the book. Erik-Jan Broers, Klaas Dijkhoff, Raymond Kubben, Tessa Leesen, Thomas Lina, Olga Tellegen-Couperus, Karlijn van Blom, Jan-Hendrik Valgaeren and Beatrix van Erp-Jacobs have enriched the book with their suggestions and comments. David Ibbetson took great trouble in reading and commenting on the final manuscript and made many valuable suggestions. I should also like to thank all those who have helped shape my views on law, legal history and cultural history over the years. In particular, I wish to acknowledge Maurice Adams, Philip Allott, Clifford Ando, Dominique Bauer, Raoul Bauer, James Crawford, Reginald De Schryver, Peter Haggenmacher, Dirk Heirbaut, Mark Janis, Benedict Kingsbury, Georges Martyn, Jos Monballyu, Stephen Neff, Paul Nève, Michel Oosterbosch, Andreas Osiander, Amanda Perreau-Saussine, Ignacio Rodriguez, Fred Stevens, Raoul van Caenegem, Laurent Waelkens, Bart Wauters, Alain Wijffels and Willem Witteveen.

This book first appeared in 2004 in Dutch as *Inleiding tot de Europese rechtsgeschiedenis* with Leuven University Press. Jan Arriens, to whom I am most indebted, translated the text which I then revised and updated. From the first time I came forward with the idea of producing an English version of the book, Finola O’Sullivan at Cambridge University Press gave it her full, enthusiastic support. Richard Woodham, Carol Fellingham Webb and Chantal Hamill at the Press put in a great deal of hard work and devotion in the final laps of the publication process. My parents and in-laws, Amber, An, Andreas, Jana, Fauve, Joost, Maurane, Rebecca, Wim and Sabien, as well as all my other ‘birthday-party friends’, I thank for keeping work on this book and other projects from becoming an even larger part of my life.

Brugge