

# Contents

List of Figures	page xii
List of Tables	xiv
Acknowledgments	xv
Note on Translations and Citation Style	xix
Note on the Cover	xxi
Country Summary – Germany, <i>The World Factbook</i> (2021)	xxiii
<b>1 Introduction: Encounters with Foreign Legal Cultures</b>	<b>1</b>
1.1 Comparatively Modest	8
1.2 What We Compare	10
1.3 How We Compare	17
1.3.1 Difference or Similarity	18
1.3.2 Subjectivity or Science	26
1.4 Conclusion	31
<b>2 The Civil Law Tradition</b>	<b>37</b>
2.1 The Civil Law Tradition: Historical Development	39
2.2 The Central Elements of the Civil Law Tradition	44
2.3 Scholars and Legal Science in the Civil Law Tradition	57
2.4 Conclusion	63
<b>3 Germany's Plural Legal Culture</b>	<b>67</b>
3.1 Free Law	71
3.2 Pure Law	76
3.3 Moral Law	79
3.4 Objective Order of Values	87
3.5 Conclusion	92
<b>4 Foundations I: Legal History</b>	<b>96</b>
4.1 Old German Legal History	97
4.2 New German Legal History	106
4.3 Alternative Histories of German Law	117
4.4 Conclusion	119



<b>5</b>	<b>Foundations II: Political and Legal Institutions</b>	<b>123</b>
5.1	Federalism	125
5.2	Lawmaking Institutions	130
5.3	Executive Authority	135
5.4	Legal System and Courts	140
5.5	Conclusion	149
<b>6</b>	<b>Foundations III: Legal Education, Legal Method, Legal Actors</b>	<b>154</b>
6.1	Legal Education	155
6.2	Legal Method	164
6.3	Legal Actors: Judges and Lawyers	173
6.4	Conclusion	191
<b>7</b>	<b>German Private Law: The Civil Code</b>	<b>196</b>
7.1	The German Civil Code and the Civil Law Tradition	199
7.2	Values and Style: What Makes the <i>Bürgerliches Gesetzbuch</i> a German Civil Code?	209
7.3	The Regulatory Technique of the German Civil Code	214
7.4	Using the Code: A Suretyship Contract Dispute	223
7.5	Conclusion	237
<b>8</b>	<b>German Public Law: Constitutionalism</b>	<b>242</b>
8.1	Constitutional Supremacy: The German Basic Law	247
8.2	Judicial Review: The Federal Constitutional Court	256
8.3	Horizontal Effect ( <i>Drittwirkung</i> ): The Encounter between Common Law and Civil Law	272
8.4	Application of <i>Drittwirkung</i> by the Constitutional Court: The <i>Suretyship Case</i>	276
8.5	Conclusion	286
<b>9</b>	<b>German Public Law: Administrative Law</b>	<b>291</b>
9.1	The Common Law and Civil Law Qualities of German Administrative Law	294
9.2	German Administrative Law: Substance Not Process	299
9.3	Administering Islamic Law in Germany	314
9.4	Conclusion	334
<b>10</b>	<b>German Criminal Law</b>	<b>340</b>
10.1	The Theory and Logic of German Criminal Law	343
10.2	An Example of German Criminal Law: The <i>Frankfurt Police Torture Case</i>	359



10.3 Criminal Law in German Popular Culture: <i>Terror</i>	369
10.4 Conclusion	376
<b>11 German Procedural Law</b>	<b>380</b>
11.1 German Procedure: Inquisitorial or Adversarial Justice	383
11.2 German Civil Procedure	387
11.3 German Criminal Procedure	400
11.4 Conclusion	414
<b>12 The Europeanization of German Law</b>	<b>418</b>
12.1 A European Legal Tradition: Supranational and Supreme	422
12.2 A European Legal Tradition: Common Market and a Neoliberal Agenda	427
12.3 Europeanization of German Law: The Example of Contract Law	432
12.4 Limits to the Europeanization of German Law	448
12.5 Conclusion	458
<b>13 Epilogue: Germany's German Law</b>	<b>461</b>
Index	470