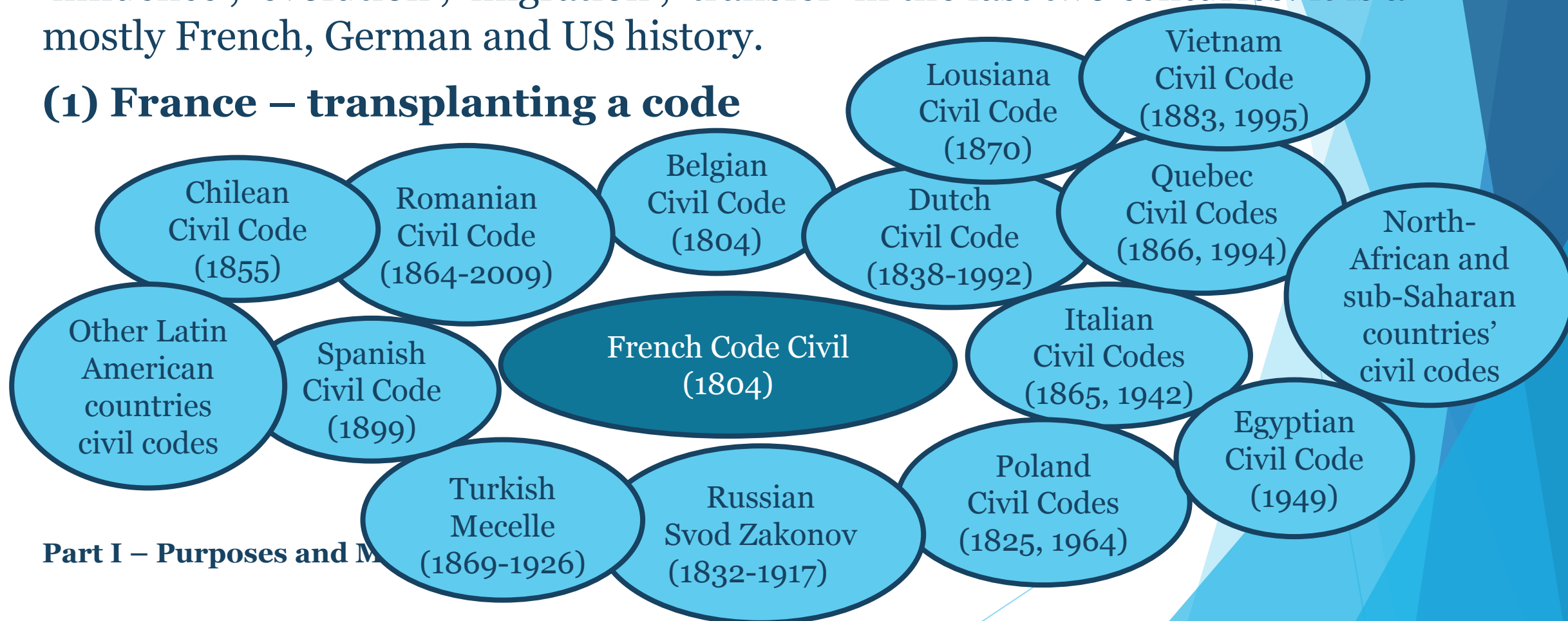


# 4. Comparative Law, Transplants, and Globalization

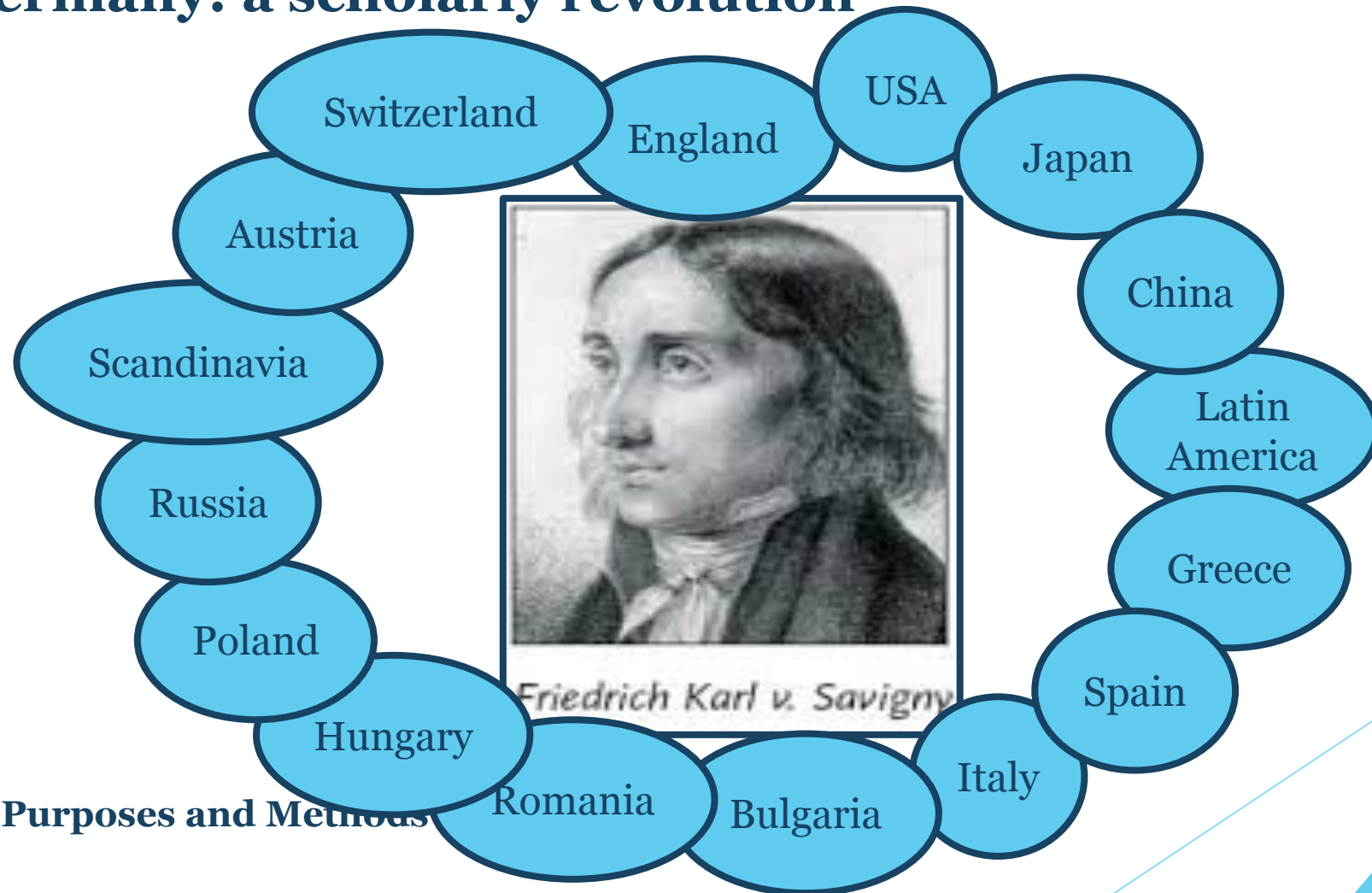
‘Transplant’, ‘reception’, ‘(selective) borrowing’, ‘adaptation’, ‘mutation’, ‘influence’, ‘evolution’, ‘migration’, ‘transfer’ in the last two centuries: it is a mostly French, German and US history.

## (1) France – transplanting a code



# 4. Comparative Law, Transplants, and Globalization

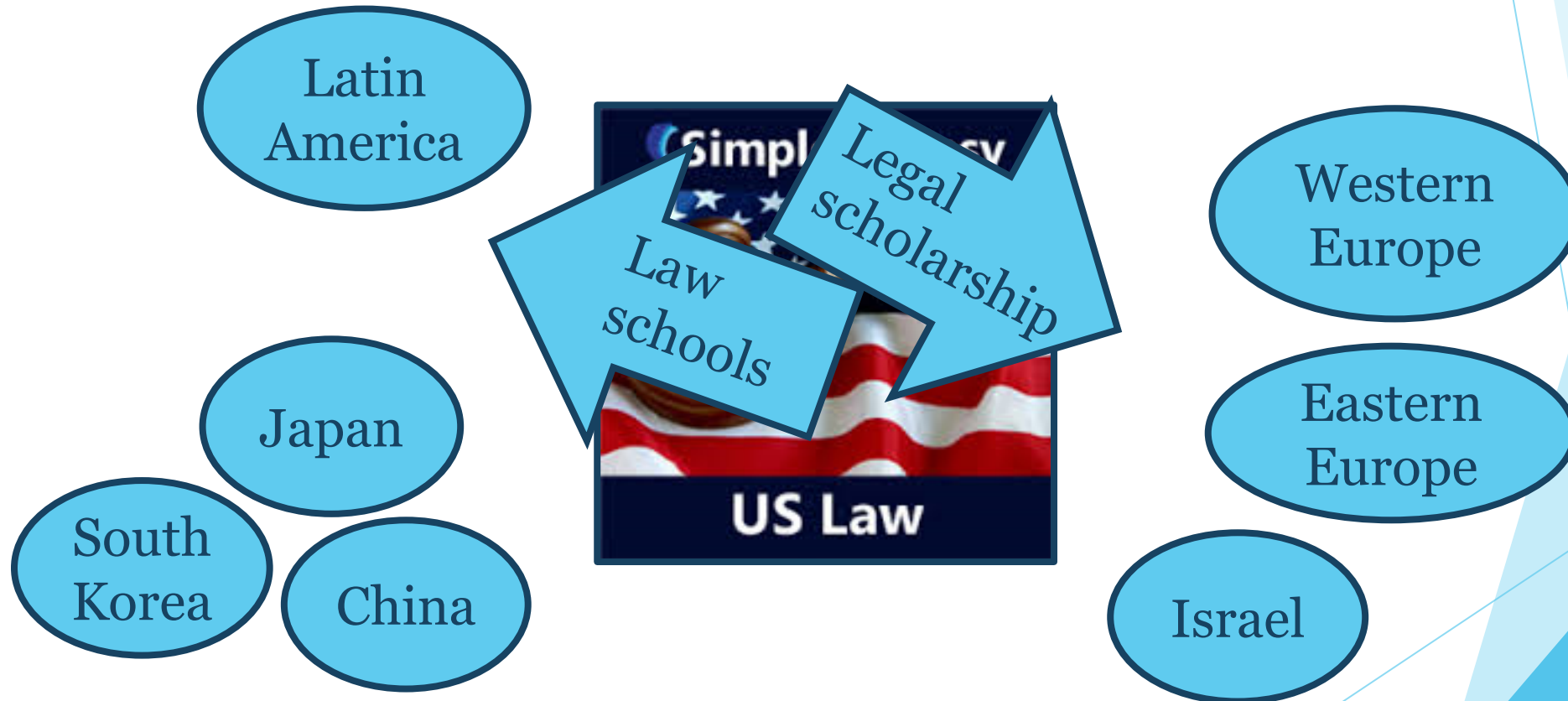
## (2) Germany: a scholarly revolution



Part I – Purposes and Methods

# 4. Comparative Law, Transplants, and Globalization

## (3) USA: the power of legal education



## 4. Comparative Law, Transplants, and Globalization

**Globalization:** “the thing that globalized was not, in any of the three periods, the view of law of a particular ideology. [...] Nor was it a philosophy of law [...] And what was globalized was most definitely not a particular body of legal rules. [...] What was globalized were] a conceptual vocabulary, organizational schemes, modes of reasoning, and characteristic arguments. They were used in everything, from jurists’ writings for lay audiences to legal briefs, judicial opinions, treatises and doctrinal writing and legal philosophy”. [**Duncan Kennedy, Three Globalizations of Law and Legal Thought: 1850-2000, in Trubek & Santos (eds.), The New Law and Economic Development: A Critical Appraisal (2006), 19, 22]**]

Legal transplants without globalization

Dutch Civil Code (1992) >  
Albanian Civil Code (1993)  
Quebec Civil Code (1994) >  
Romanian Civil Code (2009)

Part I

Law

Globalization without legal transplants

McDonald coffee cup sleeves after *Liebeck v. McDonald’s Restaurants* (1994)

## 4. Comparative Law, Transplants, and Globalization

What are the conditions for the success of a legal transplant ?  
[**Berkowitz, Pistor and Richard, The Transplant Effect, 51 AJCL 163-203 (2003)**]

A well-designed strategy for institution building should take into account local knowledge, participation and experimentation, and adapt the transplanted law to local conditions.

This counters the assumptions embraced by the World Bank in its Doing Business Reports: the way in which a country receives its formal law is a much more important determinant of the effectiveness of its legal institutions than the particular legal family that it adopted.

contestualization  
and familiarity

demand for law  
enforcement

legal institutions  
match the  
demand

transplanted law  
is internalized

# 4. Comparative Law, Transplants, and Globalization

## Colombian Civil Code

Art. 669(1): “El dominio que se llama también propiedad es el derecho real en una cosa corporal, para gozar y disponer de ella arbitrariamente, no siendo contra ley o contra derecho ajeno”

## French Civil Code

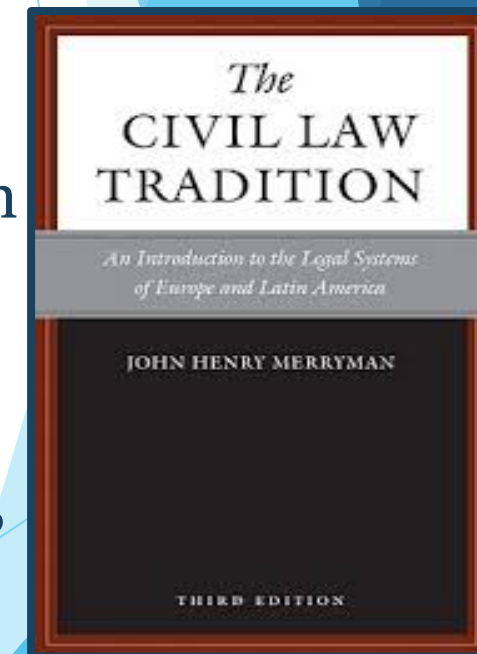
Art. 544 Code civil FR: “La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements”  
[“Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations”]

# 5. The Western Legal Tradition

What is a 'tradition' in comparative legal scholarship ?

A tradition is a widespread mentality, a daily vision of what legality is, and by whom and in which ways it is to be administered.

“A legal tradition is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught. The legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective”: **J.H. Merryman, *The Civil Law Tradition*, 3<sup>rd</sup> ed., Stanford U.P., 2007, 1-2.**



**Part II – Comparative Law Across Legal Traditions**