Book Review

Bussani, Mauro & Mattei, Ugo (editors): *Opening Up European Law*, Stämpfli Publishers Ltd., Berne (Switzerland), ISBN 978-3-7272-2029-6; Sellier. European Law Publishers, Munich (Germany) ISBN 978-3-86653-022-5; Carolina Academic Press, Durham (USA) ISBN 978-1-59460-358-7, 2007, approx. 310 pages

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This book is a collection of papers presented at various plenary sessions during the General Meetings of 'The Common Core of European Law' Project held between 2001 and 2005 in Trento, Italy. The volume is the third of its kind; similar collections have been previously published by the same editors in 2000 and 2002/2003.[1]

The 'Common Core of European Law' project was launched in 1993 under the auspices of the late Professor Rudolf B. Schlesinger. It constitutes one of the many projects on the comparison and unification of European private law and became part of the Joint Network on European Private Law in 2005. The latter was created by the European Commission. The projects participating in the Joint Network have been asked to deliver a proposal for the Common Frame of Reference for European Contract Law, the so-called 'Common Principles on European Contract Law'. However, unlike the Study Group on a European Civil Code, the 'Common Core' is not involved in legislative drafting activity. Accordingly, its task in the Joint Network will be a theoretical one: it will "apply its methodologies of factual approach and dissociation of legal formants" (p. XIV) to the results of the Study Group's draft principles of European private law. The Common Core's approach is, thus, purely academic: its goal is to gain and gather "a deeper and broader knowledge" (p. XV) of the existing European private laws; "knowledge and understanding should come before action" (p. XVIII). We will come back to this.

The book divides the contributions in two categories. The first six contributions are grouped under the title 'The Western approach to the 'Common Core of European Private Law''. They have in common that – with the exception of Likosky's paper – they all deal with methodological questions of the Common Core. Vivian Grosswald Curran, University of Pittsburgh, explains Schlesinger's methodology in comparing different legal systems and contrasts it against today's European background. She points out that the blind adoption of Schlesinger's approach (which was after all, an uninitiated, strictly describing method, mostly characterized by Schlesinger's search for differences among various laws) will scarcely be the key to European comparatists. Hypersensitivity to differences could be detrimental in developing a legal order for the European Union (p.

[1] M. Bussani & U. Mattei, Making European Law, Essays on the Common Core Project (2000); M. Bussani & U. Mattei, The Common Core of European Private Law, Essays on the Project (2002/2003).

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6). A similar note of caution is sounded by Günter Frankenberg, University of Frankfurt/Main. He reminds the Trento Group not to pursue a methodology of "sterilization of fact" (p. 39 *et seq*.). The 'Trentinos' should part with their "rather prescriptive/descriptive distinction" (p. 43) and accept that, "whether they like it nor not, [they are] not merely fact-hunters but interpreters of culture and cultural artefacts" (p. 44). The suggestions made by David J. Gerber, Chicago-Kent College of Law, are perhaps more restrained in their criticism, but nonetheless quite explicit in their conclusion. Gerber picks up the Common Core's picture of drawing a comprehensive map of (existing) European private law and, after praising the achievements of the Trento Group at great length, suggests among other things to pay more attention to the method of gathering legal material and to enhance the accessibility of the results found.

Whereas the first three contributions constitute a quasi resume of what the Trento Group has achieved so far and where its weaknesses lie, the next article adopts a purely forward looking approach. Michael B. Likosky, University of London, reflects to what extent the Common Core may be able to adapt to the demands charting the relationship between globalisation and European private laws. He starts by pointing out that business expansions within the EU require the observation of provisions that usually bear a public law character, whereas non-European globalisation is often embedded in a private law framework. After discussing some examples where public law has influenced private law and vice versa, he invites the Common Core to start analysing the relationship between globalisation and European private law and, where required, to soften the boundaries between public and private law.

The floor is then given to Mathias Reimann, University of Michigan, an insider of the Common Core who has been involved in the project almost since the beginning. He commends the publications that have appeared so far under the auspices of the Trento Group. Yet, considering their small number (by 2004, i.e., within ten years, no more than six volumes had been published),[2] Reimann simultaneously admits that one of the Group's original goals, the drawing of a comprehensive map of European private law, will perhaps have to be abandoned. He deems it wiser to choose selected areas and restrict the investigation of European private law to these specific topics.

The last contribution of the first section is made by Encarna Roca Trias, University of Barcelona. She outlines the history, status quo and possible future

[2] By now, the following books have been published (in order of publication): R. Zimmermann & S. Whittaker (Eds.), Good Faith in European Contract Law (2000); J. Gordley (Ed.), The Enforceability of Promises in European Contract Law (2001); M. Bussani & V. Palmer (Eds.), Pure Economic Loss in Europe (2003); V. Palmer & F. Werro (Eds.), The Boundaries of Strict Liability (2004); R. Sefton-Green (Ed.), Mistake, Fraud, and Duties to Inform in European Contract Law (2004); E.-M. Kieninger (Ed.), Security Rights in Moveable Property in European Private Law (2004); M. Graziadei, U. Mattei & L. Smith (Eds.), Commercial Trusts in European Private Law (2005); B. Pozzo (Ed.), Property and Environment (2007); Th. Möllers & A. Heinemann (Eds.), The Enforcement of Competition Law in Europe (2007). In preparation are M. Hinteregger (Ed.), Environmental Liability in Europe; J. Cartwright & M. Hesselink (Eds.), Pre-contractual Liability (cf. the website of the 'Common Core' project, http://www.jus.unitn.it/dsg/common-core/books.html (last visited on 8 November 2007)).

scenario of Europeanization of private law. For Roca Trias, the requirements of Article 5 of the EC Treaty, namely subsidiarity and proportionality of measures taken by the European Community, would constitute no obstacle to the creation of a European Civil Code. The role meant for the Common Core in this respect – for Roca Trias leaves no doubt that she would welcome a proper European Civil Code – lies in a preliminary part: the Trento Group provides the "legal cartography which could provide a solid basis towards European harmonisation of Private Law" (p. 116).

The second group of contributions bears the title 'The New Frontiers of European Private Law' and consists of eleven papers given by scholars from the new EU Member States. Ten of them deal with a particular domestic legal system; most contributions provide a historical survey and an overview of the status quo. Thus, we learn of the main features of former Yugoslavian law (Tibor Varady), of Hungarian (Tibor Tajti) as well as Lithuanian (Valentinas Mikelėnas), Russian (Dmitry V. Dozhdev), Latvian (Kaspars Balodis), Polish (Ewa Bagińska), Czech (Luboš Tichý), Cyprian (Martha Hayes Sampson), Slovakian (Anton Dulak), and Estonian law (Paul Varul). The essays vary considerably in length, style, and quality. Not all of them are "treasury boxes", as the editors would have wished (p. XV). Some of the contributions remain plainly descriptive or confine themselves to very special areas. Particularly little insight for comparative lawyers comes from the Cyprian contribution, which restricts its remarks to a depiction of the colonial history of Cyprus.

Other contributions, however, provide valuable information from a comparative lawyer's perspective. Tichý's article is such an example. A brief overview of Czech legal history, communist civil law, and the present Civil Code is followed by a critical analysis of the Draft Civil Code of April 2005[3]. The author claims to point out (only) the salient features of the Code. However, considerable comparative knowledge is shown when Tichý starts explaining from which legal system particular legal instruments have been influenced, or when he bemoans the fact that the Draft Civil Code lacks the influence of the latest international tendencies such as the CISG, the UNIDROIT Principles or the Principles of European Contract Law (p. 255). Interestingly enough, as the respective authors point out, the Estonian, Lithuanian, and Latvian Civil Codes each have been strongly influenced by the CISG and international soft law. The other contributions remain mute on this point.

Another instructive article is the one by Varady, who provides, on the one hand, an overview of ideology-driven legislation in former Yugoslavian law (e.g., in family law), and, on the other hand, a survey on legislative zones where the impact of ideology was low (e.g., party autonomy in contract law). Also Esin Örücü's article is interesting when describing unification processes in European family law (although the article, addressing legal comparison, harmonisation and unification in general, would rather belong to the first group of contributions).

All in all, the book is enriching for every comparatist. Whether one embraces the concept of the Trento Group or not, it must be admitted that it animates the

[3] By November 2007, the Draft Civil Code had not yet been implemented.

comparative and unification discussion both on a European and an international level. The concept as such is ambitious. The Common Core searches "for what is different and what is already common behind the various legal forms of European Union Member States" (p. XIV). Bussani and Mattei stress the differences and diversities of European private law systems and thereby try to distinguish themselves from "the ongoing Commission-sponsored efforts of private law making in Europe [which] seem to suffer both from superficiality, too often taking the laws of the member countries at its face value without a genuine effort to put it in context, and lack of attention to the many variations and possibilities offered by legal experiences outside of the leading core of western European countries" (p. XV).

Their vision of an extensive cartography of the European legal systems requires going both in depth and in width – a time-consuming concept which has been doubted at several occasions (cf. the first contributions in this volume). There are certainly also other points to oppugn, e.g., the risk of ignoring that, in contrast to what the Group strives at, there cannot be such a thing as a completely unbiased description of a legal fact. However, what gives credibility to their striving and to their wish to be genuinely academic is that the Common Core does not shy away from criticism. On the contrary, they let the series of contributions in this book begin with quite critical comments (Mattei reportedly asked the contributors to answer the following questions: "Have we done what we said we were going to do, and, if not, why not and what remains to be done?", p. 49). This demonstrates confidence in their scope and methodology; and is to be applauded.

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