

European Private Law: *Quo Vadis?**

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As his scholarly work shows, our colleague Joël Monéger has been quite interested in the Europeanization of private Law. So have I. However, my orientation has changed rather importantly over time. I thought our “jubilare” would enjoy it, if I told him about the evolution I have gone through with respect to the Europeanization of the law of obligations. Admittedly, and in part because the Treaty on the functioning of the European Union does not deal expressly with that part of the law, things look somewhat different from the way they do in competition law and antitrust law, the fields of expertise of Professor Monéger. Be this as it may, Europeanizing private law has triggered polemics and mobilized forces of resistance, more perhaps in France than anywhere else¹. While, for a long time, I found this resistance hard to understand, if not regrettable, I have come to relate to it and to find it culturally legitimate. This is one more reason to approach the question here proposed, as a tribute to Joël Monéger as a European scholar and in memory of the good times I had with him at the Tulane Law School Summer program in Paris.

* This text was drafted on the basis of a presentation I gave in Ankara on November 2, 2015, at the occasion of the 90th anniversary of the reception of the Swiss Civil Code in Turkey. Because of time constraints, the text remained the expression of the short presentation given there. The footnotes have also been limited to their minimum. This text is about to be published by the Law Faculty of the University of Ankara in the proceedings of the conference. With the permission of Prof. Dr. Arzu Oguz, former Dean of the Ankara Faculty of Law, it appears also here in a slightly modified form.

¹ <http://bruxelles.blogs.liberation.fr/2007/01/14/> In that context, Professor Monéger is reported to have signed the letter in opposition to the one written by French anti-European law private law scholars in early 2010. Had I been a French professor in France, I would have signed with him.

In the last thirty years, an important part of academia has promoted European private law to a new discipline. Unlike their pre-revolutionary predecessors with the European *ius commune*, however, contemporary scholars have done so, for the most part, under the banner of a legislative agenda, with the proposition that common (and not just harmonized) *general* private law rules are a prerequisite to the functioning of a European market. Accordingly, a European law of contract was presented as a condition of the very existence of this market. Based essentially on black letter law comparison between existing national rules, the drafting of this law began under the auspices of various groups made of private law specialists. Their (more or less self-) assigned mission was to come up with the best rules. This is how the 1998 European Principles of Contract Law followed by the 2011 Draft Common of Reference came along. Anchored in party autonomy, liberal private law at the service of the market was deemed to be apolitical and technical, inventing the rules, simply an exercise in rigor and rationality.

Some still seem to adhere to this credo. Over time though, the enterprise has encountered decisive resistance, and the positivist approach taken has been challenged together with the idea that the market alone could possibly be the sole object of the attention.² By pointing out law's embedment, sociologists and legal theorists have shown that private law, like any other law, cannot be distinguished from culture. Just as law is culture, culture is law.³ Furthermore, with the help of linguists and theorists of translation, comparatists have submitted that language determines the content of the law and that translation does not reproduce the original text but transforms it and gives it a life of its own. With this input, one has begun to realize that simply because professors come up with a smart system of rules, cultural, psychological, linguistic and thus legal diversity will not disappear.⁴ As it appears obvious to some, this resilience is just as vibrant in the field of contract and business law as it is in other fields of law. As an example, it is enough to take the withdrawal of the Common European Sales Law (CESL) regulation's project,

² Under the pen of a number of various European private law specialists, see Study Group on Social Justice in European Private Law, *Social Justice in European Contract Law: A Manifesto*, 10 EUR. L.J. 653 (2004).

³ See generally Werner Menski, *Plural Worlds of Law and the Search for Living Law*, in RECHTSANALYSE ALS KULTURFORSCHUNG (Werner Gephart ed., 2012).

⁴ See generally ALBERT A. EHRENZWEIG, *PSYCHOANALYTIC JURISPRUDENCE: ON ETHICS, AESTHETICS, AND "LAW"—ON CRIME, TORT, AND PROCEDURE* (1971).

at the end of 2014,⁵ which, to me, finds its cause in the resistance to unification as rooted in political, cultural and linguistic European diversity, rather than in any other reason.

The purpose of this short paper is to illustrate this statement and to show how the “quality” of the rules that some call for has very little, if anything, to do with the possible success of the legislative enterprise of the European Union.⁶ Unifying any private law faces in reality cultural and political challenges that private law specialists have essentially neglected. The title of this paper is no doubt overly ambitious, as the analysis does not purport to present the various complex aspects that the question raises. Instead, the paper’s scope is actually quite narrow. With a deliberately personal touch, the essay merely purports to offer some personal remarks. Because I embraced the project of Europeanizing private law, in part with an emotional reaction against the established national order, the paper will begin by revisiting my own relationship to the subject matter (I). It will then proceed with a reflection of the shortcomings of this initial approach (II).

I. Revisiting Assumptions and Ideas

Perhaps because I was born in the same year as the Treaty of Rome establishing the European Economic Community (EEC),⁷ ...or rather perhaps because I was born and raised in Switzerland by a French mother, who had lived through WWII, and a Swiss-German father, whose father was half British, half German, or despite these facts, I grew up believing in the necessity and indeed in the beauty of the EEC. I reinforced my beliefs when the European Community (EC) and then the European Union (EU) were created, and I rejoiced over European citizenship. To me, European integration was a promise of peace and prosperity. It was also a tool to overcome nationalism and parochialism. I believed in the possibility of a Federal Europe, conceivably even

⁵ See European Commission, *Annex II: List of withdrawals or modifications of pending proposals*, 12 (Dec. 16, 2014), http://ec.europa.eu/atwork/pdf/cwp_2015_withdrawals_en.pdf.

⁶ For example, see Reinhard Zimmermann and Ingeborg Schwenzer in their contributions at the Ankara conference referred to in footnote 1. See also Ingeborg Schwenzer, *The Proposed Common European Sales Law and the Convention on the International Sale of Goods*, 44 UCC L.J. 457 (2012); Reinhard Zimmermann, *Codification – The Civilian Experience Reconsidered on the Eve of a Common European Sales Law*, 8 EUR. REV. CONT. L. 367 (2012).

⁷ Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11.

composed of regions that would change the current national borders of the European Member States.

When I became a lawyer, and more specifically a specialist of private law, I did not forget about the values and hopes I had cultivated earlier. I became very much enamored with the new idea that the European Union should get involved in the making of private law, an idea that the authors of the various European treatises admittedly had never envisioned. To me, this project was also a nice way to survive some of the narrow mindedness of local business lawyers. A Europeanization of private law, I thought, could perhaps even help achieve big changes that some revolutions sometimes do. After the rise of the nation state, two hundred years ago, denationalization could storm in and follow the new borders of civil society. Detaching the law from the nation-state, I perceived, was a generous and useful enterprise that would further contribute to the rapprochement of the people of Europe. I got involved—more or less actively—in some working groups.⁸ At the same time, I objected to the French academics' resistance against this move and regretted their absence from the scene where these matters were discussed.⁹ Even if I felt that they made some valid points, these opposing colleagues appeared to me nationalistic, conservative as well as anti-European and thus a-historical. Their rejection of an integrated European private law, I thought, sounded polemical, shallow and ideological. Once again, I think that Joël Monéger and I would have agreed on that to a large extent¹⁰.

⁸ I was the Swiss observer in the Lando Commission (given its name after its founder Professor Ole Lando) and I participated in several meetings where the Principles of European Contract Law (PECL) were discussed. *See, e.g., THE COMMISSION ON EUROPEAN CONTRACT LAW, THE PRINCIPLES OF EUROPEAN CONTRACT LAW, PARTS I & II* (Ole Lando & Hugh Beale eds., 1999). I also became involved in the Common Core of European Private Law Project, launched by Ugo Mattei and Mauro Bussani, in Trento and then pursued in Torino. A major difference however between these two groups lied in the fact that the latter did not have any normative agenda; it was created to unearth divergences and commonalities between European private laws without seeking to achieve any legislative goal. One of the projects I worked on dealt with the foundations of liability; *see THE BOUNDARIES OF STRICT LIABILITY IN EUROPEAN TORT LAW* (Franz Werro & Vernon V. Palmer eds., 2004).

⁹ *See* Yves Lequette, *Vers un Code civil européen?* 107 *POUVOIRS* 97 (2003); Yves Lequette, *Quelques remarques à propos du projet de Code civil européen de M. von Bar*, 28 *DALLOZ* 2202 (2002). For a more nuanced resistance to or even acceptance of the idea of a European civil Code, *see* Bénédicte Fauvarque-Cosson, *Faut-il un Code civil européen*, *RTD CIV.* 463 (2002); Claude Witz, *Plaidoyer pour un Code Européen des obligations*, 5 *CHRONIQUES* 79 (2000), who, together with Professor Denis Tallon, was a member of the Lando commission. *See also* Catherine Kessedjian et al., *Observations sur la lettre ouverte au président de la République intitulée « L'Union européenne, la démocratie et l'État de droit »*, *La Semaine Juridique - Edition Générale* (Jan. 10, 2007), http://www.lexisnexis.fr/droit-document/article/la-semaine-juridique-edition-generale/01-2007/018_PS_SJG_SJG0701AL00018.htm#.V8x_pzsiRtI.

¹⁰ This is what I think judging from the document cited at the end of the previous footnote and from the memories I have of him.

Eager to learn, I ignored my own biases and also those of the promoters of European private law. I was pleased when I saw the possible impact that the EC and then the EU directives could have on the substance of private law in the Member States. I studied the phenomenon and took classes with EU specialists who taught me what transformations the EU directives and the European Court of Justice's (ECJ) case law were imposing to national private law, at least in the books.¹¹ I then bought into the idea that those directives were often too narrow and too pointillistic in scope. With others, I repeated that what the European Single Market needed, instead of these partial and somewhat incoherent fragments of EU private law, was a comprehensive and systemic legal instrument. I accepted the idea that private law was an essential component of the market, and thus that the European market could not exist without a European civil Code, or at least not without a common set of rules regulating the law of contract.¹²

I also studied the birth of the Action Plan of the Commission in 2001.¹³ I observed that the concept of a European civil Code was soon replaced with that of a *Common Frame of Reference*.¹⁴ The fact that the very notion of a European civil Code became almost immediately politically dubious did not alter my trust in the possibility of drafting common rules in most fields of private law for all Member States. The idea of Europeanizing private law appeared to me to be what we lawyers, in our time, had to do ("vom Beruf unserer Zeit"). I made the comparison with the Swiss Cantons that had abandoned their civil codes in 1881, as similarly other integrated entities had abandoned their local laws for the benefit of a unified federal law. The same should happen to the future United States of Europe.

The rest has just unfolded. The elephant "Draft Common Frame of Reference" (DCFR) has turned at best into a toolbox for professors, and CESL, the weird mouse it had given birth to, died

¹¹ I took Professor Müller-Graff's classes at the academy in Trier. His publications are too numerous to be listed here, but just as examples, see THE EUROPEAN ECONOMIC AREA ENLARGED (Müller-Graff ed., 2006); Peter-Christian Müller-Graff, *EU Directives as a Means of Private Law Unification*, in TOWARDS A EUROPEAN CIVIL CODE, 149 (Hondius et al. eds., 4th rev. ed., Kluwer L. Int'l 2011) (1994).

¹² For all, see the seminal article by Jürgen Basedow, *A Common Contract Law for the Common Market*, 33 COM. MARKET L. REV. 6, 1996.

¹³ See generally European Commission, *Science and Society – Action Plan* (July 25, 2001), https://ec.europa.eu/research/swafs/pdf/pub_gender_equality/ss_ap_en.pdf.

¹⁴ See generally Study Group on a European Civil Code & Research Group on EC Private Law, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)* (2009), http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf.

in December 2014.¹⁵ Meanwhile, some researchers keep on elaborating and dreaming of European Principles in a variety of fields of private law, or even at a global level, ignoring that the practical world out there does not really listen to them. Does it matter that they work without practical input on legal practice? I think it does. I had assumed that scholars would put their efforts at the service of a business cause and that they wanted to achieve some concrete result.

I believe it is fair to say that the drafters of the DCFR underestimated the real dimension of the law. There was also a lot of focus on black-letter rules and not enough on law in action. In a somewhat old-fashioned and formalistic understanding that characterizes private law doctrinal work, the political and cultural dimensions of private law were set aside.

II. Coping with the Failed Unification of Private Law in Europe

The brief sketch so far suggests that I had adhered to the credo that some European private law specialists had come to advocate as of the mid-1980s until recently. Indeed, it felt to me like the right thing to do, even if at times I thought that the terms of the rhetoric and the methods deployed were simplistic. Today, I think that these private law scholars misjudged the important challenges of their work. Overall, the architects of the Europeanization of private law lost sight of how culture and politics determines law.

There is no denying that private law in the Member States appears to have changed in the last decades under the action of the European legislator and of the ECJ. Cases like *Brasserie du Pêcheur*,¹⁶ in State liability, the *Leitner* case,¹⁷ with respect to the definition of the compensable harm, or *Commission v France*¹⁸ in the area of products liability, were even spectacular

¹⁵ See *id.*; *Annex II*, *supra* note 5. In May 2015, the EU Commission, as part of the Digital Single Market strategy, undertook to modify the scope of CESL and apply the regulatory framework that it provides to Internet transactions. See generally European Commission, *A Digital Single Market Strategy for Europe*, (May 6, 2015), http://ec.europa.eu/priorities/digital-single-market_en.

¹⁶ ECJ joined cases *Brasserie du pêcheur v Federal Republic of Germany and The Queen v Secretary of State for Transport, ex parte Factortame Ltd and Others*, C-46/93 and C-48/93, ECR 1996 I-01029.

¹⁷ *Simone Leitner v. TUI Deutschland GmbH & Co. KG*, C-168/00, ECR 2002 I-02631.

¹⁸ *Commission v. France*, case C-52/00, ECR 2002 I-03827.

pronouncements that had the potential to replace the grammar of the laws in the Member States.¹⁹ At the same time, it is unclear whether and to what extent these judgements did achieve in practice the goal they were pursuing. It would be worth studying for example whether *Brasserie du Pêcheur* has actually transformed the ways in which German lawyers relate to State liability or to tort liability in general. It is likely that the very French *Brasserie du Pêcheur* judgement has not put into question the way in which German law discriminates against pure economic losses nor has it succeeded in setting aside the fault requirement in tort law, as distinct from illegality (“Widerrechtlichkeit”). Evidence for this resistance can be found in the pronouncement of several other ECJ judgments in which German parties tried to maintain a distinction between the two notions—“*Draehmpaehl*” being one of them.²⁰

Despite this European case law and its potential impact, the “mentalité” and the politics of the law probably have remained essentially unchanged. Italian lawyers, it seems to me, are not less Italian than they ever were. The same is true for all others, including for the German ones, who, more than any others, have favored the unification process and played a key role in it. The opposite actually would be quite surprising. Indeed, if an ECJ judgement immediately managed to put aside fundamental national legal assumptions, there would be something weak and questionable about them. Some of the ECJ judgments triggered anger and resistance, but in many instances the violence of their intrusion has been successfully fought. National law overall has found accommodations and has probably largely survived.

Instead of exploring in more detail whether and to what extent the laws of the member States resisted the changes triggered by EC legislation and ECJ case law, I would rather propose an explanation as to why the project of Europeanization of private law is stuck where it is. While I do not suggest any remedies here, I think that one should take note of two main problems. The first problem may be linked to the fact that private law scholars did not fully appreciate that

¹⁹ For example, in *Leitner* the ECJ left it to Member States “to determine what general implications this decision should have on losses suffered in cases involving other contractual or even non-contractual liability,” triggering “an invitation to revisit the general notion of compensable loss beyond the scope of the [products liability] directive.” Franz Werro, *Comparative Studies in Private Law: A European Point of View*, in *THE CAMBRIDGE COMPANION TO COMPARATIVE LAW* 117, 124-25 (Mauro Bussani & Ugo Mattei eds., 2012). In *Commission v. France* “the ECJ held that the directive of 1935 deprives the Member States of the power to give remedies extending the limits set forth by the directive when based on the defectiveness of the product alone.” Therefore, “impos[ing] the limits of no-fault liability and forbid[ing] the national lawmaker from granting additional protection to the victims of defective products.” *Id.* at 127.

²⁰ See *Draehmpaehl v Urania Immobilienservice*, C-180/95, ECR 1997 I-02195.

“Professorenrecht” is not law in action. Law in action is politics and politics in private law remains diverse throughout the European Union. The second is that these same scholars ignored that legal concepts are caught in a given culture and a given language that translation does not eliminate. Indeed, contrary to what is often claimed, private law, just like all law, is the product of cultural, emotional and political forces that together determine the choice and the implementation of rules.

As “Professorenrecht”, the DCFR is disconnected from any particular political context and unsupported by any democratic decision. It has, in effect, proposed several principles and rules that are likely to contradict local political preferences. For example, the DCFR’s rule that limits the scope of tort law to compensating for a “legally relevant damage” (Chapter 2: VI –2:101)²¹ favors a more liberal market-oriented vision of the law, which resembles that of the German BGB (§ 823 BGB), over a more generous approach, endorsed by the French Code civil (art. 1382 CCfr). Is one preferable to the other? There is no way to agree on that question. Nothing, other than political preferences, can determine why one would want one rather than the other. When the same DCFR sets aside a general clause of strict liability for harm caused by things, as proposed by art. 1384 CCfr, it is again expressing a political preference, contradicting what the French have considered to be the best rule. The DCFR is not able to change anything in this respect.

Likewise, whether the law specifically enforces contractual promises or not, or only in certain cases, is nothing but the way in which a given legal system favors one solution over the other. Damages might feel more in line with economic efficiency for some, but they contradict others’ preference for the word kept.²² To ask whether one is better than the other is to me obviously a false question. The choice depends on preferences that do not and cannot compete against one another. Again, one cannot meaningfully claim that one legal rule is better than another one. The same is of course true for legal systems in their entirety.

²¹ See Study Group on a European Civil Code & Research, *supra* note 14, at Chapter 2: VI –2:101.

²² For an illustration of the swimming-pool cases in England and France, see *Ruxley Electronics and Constructions v. Forsyth*, [1995] 3 WLR 118, [1996] AC 344; Cass. Civ., 17 November 1984, reported in H. Beale, A. Hartkamp, H. Kötz, and D. Tallon, *Cases, Materials and Text on Contract Law*, 689–90 (Hart 2002). On the comparative analysis of the French and English swimming-pool cases, see Ruth Sefton-Green, *The European Union, Law and Society: Making the Socio-Cultural Difference*, in *PRIVATE LAW AND THE MANY CULTURES OF EUROPE*, 37 (Thomas Wilhelmsson, Elina Paunio & Annika Pohjolainen eds., 2007).

The second and perhaps even more fundamental obstacle to unification that was ignored lies in the fact that legal principles and rules are backed up by the language in which they are expressed. Thus, beyond culture and politics, proponents of European private law also should have considered what language does to law. Although they probably saw that diversity of languages would create difficulties, they did believe that translation would take care of them. However, they did not consider that a translation of a text is always a transformation that, regardless of its quality, cannot be said to present the “truth” of the original text.²³ Nor did they relate to the fact that within a language, interpretation is inescapably centrifugal.²⁴ One set of simple words in a law-text requires judgments with thousands of words to be given a meaning, which in turn call more an infinite amount of possible interpretations. As Glanert and Legrand explain (with the support of the French philosopher Jacques Derrida), words do not acquire an ultimate objectively truthful meaning; they are always the object of an interpretation that remains open for further interpretation.²⁵

The difficulty one faces when interpreting words in one language “is compounded in the case of translation [...] since the process involves more than one language”²⁶ Promoters of a unified private law should have listened to those who work professionally on translation.²⁷ Literary figures could have helped as well. For example, Beckett, who wrote “En attendant Godot” and translated it into his native language under the title “Waiting for Godot,” explained that the two plays were different.²⁸ Indeed, “Godot” in English is not “Godot” in French, nor does the play in French ever exist in the same way as it does in English. “En attendant Godot” is part of the *Nouveau roman* movement, whereas “Waiting for Godot” belongs to the Irish literary tradition, and one could of course go on.²⁹

²³ See Simone Glanert & Pierre Legrand, *Foreign Law in Translation: If Truth Be Told...*, in *LAW AND LANGUAGE: CURRENT LEGAL ISSUES* 513, 519, 525 (Michael Freeman & Fiona Smith eds., 2013).

²⁴ See *id.* at 521.

²⁵ See *id.* at 521. They use Derrida’s analysis: “Mille possibilités resteront toujours ouvertes, alors même qu’on comprend quelque chose de cette phrase qui fait sens”. JACQUES DERRIDA, *LIMITED INC* 122 (1990). See also Pierre Legrand, *Exercices de fabrication d’une constitution*, in *POUR LA RELEVANCE DES DROITS ÉTRANGERS* 273, 277 (IRJS Editions, 2014) (pointing out that each word of the second amendment has triggered more than 2000 words to interpret them). As a student of his has observed, these 2000 words will in turn trigger more thousands of words. See ALEXANDRA FLORINA MERCESCU, *POUR UNE COMPARAISON DES DROITS INDISCIPLINÉE* (forthcoming).

²⁶ See Glanert & Legrand, *supra* note 23, at 522.

²⁷ See generally SIMONE GLANERT, *DE LA TRADUCTIBILITÉ DU DROIT* (2011).

²⁸ See Glanert & Legrand, *supra* note 23, 521.

²⁹ See Pierre Legrand, *Proof of Foreign Law in US Courts: A Critique of Epistemic Hubris*, 8 *J. COMP. L.* 343, 365 (2014).

It follows that the words in one language play out in their own way with a potential that is different in another language. Without soliciting literature, one should have understood that a “Dauervertrag” is not and cannot be a “contract of duration”. A “Dauervertrag” expresses a unique conceptual notion that the translation “contract of duration” captures only inadequately, and refers to a concept that the common law actually does not need or has not come up with. Similarly, expressed in English, “legally relevant damage” is, for example, a DCFR invention (Chapter 2: VI –2:101) that a German lawyer may recognize, but that a French or a common law lawyer will not. If it becomes a legal term of EU law, any translation into one of the 23 languages is going to trigger a meaning that escapes what it is supposed to mean at the EU level and that becomes captured in the language and in the legal culture in which it is received. The work of reception in a given language will determine outcomes different from those obtained in another language. We need not add examples. Just as the “rule of law” fails to capture “état de droit” or “Rechtsstaat,” a “Verkehrssicherungspflicht” does not exist as a duty of care or a “devoir de diligence”. Indeed, words in one language designate a reality and it is in turn that reality that determines what the words mean. Each language creates its own world, and going from one to the other does not make them disappear. The world is different from one language to the other to the extent that the reality is different. Without a multilayered system of European courts, that would gradually and very slowly give meaning to the terms at a very high cost, unification would clearly remain dead letter.

The foregoing quick summary is an attempt to show that interpretations are infinite because words lend themselves to endless interpretations and that “the abyss between languages cannot be overcome.”³⁰ However, as Glanert and Legrand point out, “the impossibility of translation – of a translation that could be ‘true’ cannot be allowed to detract from the paradoxical fact that translation is possible, and must be.”³¹ Expressed in prosaic terms, this requires accepting that rather than looking at law as an ever-achievable outcome, law is an infinite process of ongoing work of interpretation and transformation. In this light, the process of Europeanizing private law appears clearly to require much more than the adoption of “good” unified rules, even if we set aside the question of who these rules are good for. This was, among other things, what I did not

³⁰ See Glanert & Legrand, *supra* note 23, at 524 (demanding with Derrida that we accept that “the impossible is possible, as impossible”).

³¹ See Glanert & Legrand, *supra* note 23, at 524.

understand when I was a young professor. This is what the proponents of European private law still seem to ignore.

In sum, what I have come to believe is that the law is not just made of rules with a fixed meaning that you can capture, keep, impose, export or displace. It is rather, I think, a cultural practice in progress, rooted in a language as well as anchored in a psychological, literary, societal and political tradition. Beyond the fact that law never is, law does not ultimately consist of bare rules, let alone of good rules. Believing, as I did, that common rules would trigger a common law is in fact an illusion. The same illusion will probably have governed Mr. Schäuble's attempt to reform the Greek economy by imposing on the Greeks the German Code of civil procedure. Such an imposition is an act of violence, and beyond anger and resentment, it does not produce any meaningful change.³²

What is left of my Europhilia? Everything, and Brexit that I have seen happen, as I live currently in London, appears like a very regrettable event. The way I think of Europe however has changed. Instead of believing in uniformity, I see the future in the construction of a multicultural Europe that finds its unity in the respect for and the acceptance of differences.³³ Clearly, the common market was a good idea, but unity and real peace grow out of letting differences coexist rather than erasing them. Nationalism in law is just as bad as it is in general. At the same time, the idea that one solution can be imposed on all kills unity rather than produces it. I still object to some of the arguments made by a number of law professors in France, who raised their voice against the Europeanization of private law. However, I have come to embrace the idea, as some of them already had, that law is culture, and that culture is law³⁴. Law is not science nor is it a system that one can rationally agree on. Cultural diversity triggers legal diversity. Also, language

³² On the failure of the EU to meaningfully help the Greek crisis, see Philomila Tsoukala, *Household Regulation and European Integration: The Family Portrait of a Crisis*, 63 AM. J. COMP. L. 747 (2015).

³³ In a similar vein, about globalization, see ALAIN SUPIOT, *HOMO JURIDICUS: ESSAI SUR LA FONCTION ANTHROPOLOGIQUE DU DROIT* 314 (Le Seuil, 2009) (stating that “La globalisation ne sera viable que si elle est pensée non comme un processus d’uniformisation des peuples et des cultures, mais comme un processus d’unification qui se nourrit de leur diversité au lieu de s’employer à les faire disparaître.”).

³⁴ Menski (supra note 3).

necessarily determines the content of the law. Where there is more than one language, there is more than one law. As wishful as it is for Europe, unity should not mean or rest on uniformity. I look forward to discussing these questions with Joël Monéger, whose opinion will, no doubt, also have evolved over the years.