

General Introduction and Acknowledgements

The chapters in this collection were first presented in preliminary form at a conference that took place at the European University Institute, Florence, in September 2009, and have been developed subsequently in the light of the discussions conducted in Florence for the purposes of publication in this book. The book's key assumption is that there remains an urgent need for a deeper discussion of the theoretical, political, federal and enforcement dimensions of the European private law project. While much valuable work has already been undertaken, the chapters in this volume take as their starting point the proposition that further reflection and critical thought will enhance the quality and efficacy of the ongoing work of the various bodies involved in harmonisation. The volume contains contributions by those intimately involved in the preparation of the 'Common Frame of Reference', the Study Group, and the Acquis Group as well as chapters by those who have not been involved in particular projects but who have previously commented more distantly on their work—for instance those belonging to the Trento Group and the Social Justice Group. The chapters between them represent the most comprehensive attempt so far to survey the state of the harmonisation project, its theoretical, political, federal foundations and the future prospects for enforcement and compliance.

We thought that an inquiry into the foundations of European private law could be effectively undertaken by focusing on four distinct yet interrelated dimensions: the theoretical, political, federal and enforcement. Each part of the book is preceded by an editorial that introduces the reader to the relevant chapters and their interrelationships. References and individual introductions emphasise interrelationships between the four dimensions. The chapters in Part One of the collection address the theoretical foundations of European private law, with the DCFR acting as a facilitating focal point for such reflections. One of the recurring themes of the papers is that the DCFR (whatever its nature as a toolbox or as an ostensible restatement of the law) is, in various ways, problematic. For example, it is argued that private law initiatives need to be set in the context of the cultivation of a common European culture; or that they should be seen as responding to the global financial crisis, or to the need to re-regulate the market; or that they need to be sensitive to the context-dependence of contractual and tortious disputes, as well as to the difference between juridical and instrumentalist legal rationalities; or that they must be linked to a deeper understanding of private ordering and autonomy. In this light, it is arguable that the root problem with the DCFR is that it proceeds on the assumption that the theoretical foundations of private law are stable and well understood when it is precisely these foundations that need to be examined and reconstructed. The chapter contributions in Part Two address the problematic character of European private law in relation to its political foundations. They offer a map towards an understanding of what one may construe as European private

law's political foundations. The contributions offer a variety of perspectives that range from direct to indirect ways in which to engage with the political dimension, including analyses of the relevance of the East–West interface and of the complex role of 'methodology' in constructing European texts. The contributions to the federal/multi-level part (Part Three) take as their starting point that the shaping of private law in Europe is driven by a plurality of sources, binding and non-binding, legislation and case law. The special thematic concern animating the chapters in this section is the rise of sources and influences beyond the state—most conspicuously but not exclusively the European Union. The chapters explore the constitutional, institutional and intellectual devices that serve and should serve to frame the interaction of these several sources and influences. The contributions to the enforcement part (Part Four) are united in the idea to develop a common perspective on substance and procedure, on substantive and procedural justice, on public and private enforcement in private law as a means of market regulation, on procedural barriers in national law and whether and how they could be overcome through appropriate means of ADR and collective enforcement. The chapters underline the need for even deeper theoretical reflections on the relationship between the substance of European private law and appropriate enforcement and compliance mechanisms in light of empirical research.

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