

The Politics Of A European Civil Code

[#European Civil Code](#) [#EU law politics](#) [#Civil law harmonization](#) [#European legal integration](#) [#Comparative civil law](#)

Explore the intricate political dynamics and challenges involved in establishing a comprehensive European Civil Code. This discussion delves into the EU law politics influencing civil law harmonization efforts and the broader implications for European legal integration, examining the complexities of comparative civil law across member states.

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The Politics of a European Civil Code

With a significant number of claims having been brought under NAFTA Chapter 11 in the last 3 years, public and professional interest in this topic has been growing significantly. Quite simply, anyone doing business under NAFTA, or anyone representing a company doing business under NAFTA, must be completely familiar with the provisions of Chapter 11. Combining expert commentary with complete primary source materials and case law, Kluwer Law International's "Investment Disputes Under NAFTA" is the must-have resource for anyone planning - or already involved in - a Chapter 11 claim. NAFTA's Chapter 11, like many treaties, sets forth rules for arbitration. Current procedures have been developed, in part, as cases have arisen and been resolved. This book enables anyone interested in these procedures to know exactly the current state of the law. Only "Investment Disputes Under NAFTA" delivers: Article-by-Article explanations of the ins and outs of Chapter 11; a valuable collection of key case law that has been affected by Chapter 11; accurate and thorough cross-referencing to help you quickly and easily find all relevant material; and logical organization of all materials as well as a complete index and table of cases. This one-of-a-kind resource is practice based and user-friendly. It is the only product to collect the body of NAFTA jurisprudence. It also incorporates substantial references to decisions in other investment treaty cases, decisions by mixed claims commissions and other arbitral bodies, Iran-U.S. Claims Tribunal jurisprudence, and International Court of Justice decisions. Kluwer Law International's "Investment Disputes Under NAFTA" also contains charts presenting valuable information such as the arbitrators in each case, the rules under which the arbitrations have been conducted, and the remedies granted in each particular case.

The Politics of a European Civil Code

In 2003, the European Commission published its Action Plan on European contract law. That plan formed an important step towards a European Civil Code. In its Plan the Commission tried to depoliticise the codification process by asking a group of academic experts to prepare what it called a 'common frame of reference'. This paper, published in the European Law Journal in 2004, argued that drafting a

European Civil Code involves making many choices which are essentially political. It further argued that the technocratic approach which the Commission had adopted in the Action Plan effectively excluded most stakeholders from having their say during the stage when the real choices were made. Therefore, before the drafting of the CFR/ECC starts, the Commission should have submitted a list of policy questions regarding the main issues of European private law to the European Parliament and the other stakeholders. Such an alternative procedure would have repoliticised the process. It would have increased the democratic basis for a European Civil Code and thus its legitimacy.

The Politics of European Sales Law

"A legal-political inquiry into the drafting of the uniform commercial code, the Vienna Sales Convention, the Dutch civil code and the European consumer sales directive in the context of the Europeanization of contract law."--T.p.

The Politics of the Draft Common Frame of Reference

This collection of essays reflects both the diversity of the group's work and the common thread that runs through it. The core claim here is that the DCFR, despite the Commission's characterization of its proposals as purely technical, cannot escape politics. The intent is to critically identify and evaluate the model of social justice underlying the DCFR.

The European Civil Code

Hugh Collins argues that the European Union should develop a civil code to provide uniform rules for contracts, property rights and protection against civil wrongs, thus drawing together the differing national traditions with respect to the detailed regulation of civil society. The benefits of such a code would lie not so much in facilitating cross border trade, but in establishing foundations for a denser network of transnational relations of civil society, which in turn would help to overcome the present popular resistance to effective and functional political institutions at a European level. These principled foundations for a more inclusive and less balkanised civil society in Europe also provide elements of a required European social model that offers necessary safeguards for consumers, workers and disadvantaged groups against the pressures of market forces in an increasingly global economic system.

The Foundations of European Private Law

There remains an urgent need for a deeper discussion of the theoretical, political and federal dimensions of the European codification 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 on-going work of the various codification bodies. The volume contains chapters by representatives of the Common Frame of Reference, the Study Group and the Acquis Group as well as 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 codification project, its theoretical, political and federal foundations and the future prospects for enforcement and compliance.

Justifying Contract in Europe

This title explores the normative foundations of European contract law. It addresses fundamental political questions on contract law in Europe from the perspective of leading contemporary political theories. Does the law of contract need a democratic basis? To what extent should it be Europeanised? What justifies the binding force of contract and the main remedies for breach? When should weaker parties be protected? Should market transactions be considered legally void when they are immoral? Which rules of contract law should the parties be free to opt out of? Adopting a critical lens, this book interrogates utilitarian, liberal-egalitarian, libertarian, communitarian, civic republican, and discourse-theoretical political philosophies and analyses the answers they provide to these questions. It also situates these theoretical debates within the context of the political landscape of European contract law and the divergent views expressed by lawmakers, legal academics, and other stakeholders. This work moves beyond the *acquis* positivism, market reductionism, and private law essentialism that tend to dominate these conversations and foregrounds normative complexity. It explores the principles

and values behind various arguments used in the debates on European contract law and its future to highlight the normative stakes involved in the practical question of what we, as a society, should do about contract law in Europe. In so doing, it opens up democratic space for the consideration of alternative futures for contract law in the European Union, and for better justifications for those parts of the EU contract law *acquis* we wish to retain.

The New European Private Law: Vol. 3: Essays on the Future of Private Law in Europe

In *The New European Private Law*, Martijn W. Hesselink presents a revised and supplemented collection of essays written over the last five years on European private law. He argues that the creation of a common private law in Europe is not merely a matter of rediscovering the old *ius commune* or of neutrally establishing the present 'common core' which may be codified in a European Civil Code. Rather, it is a matter of making choices, some of which may be highly controversial. In this book he discusses some of the most important choices which will have to be made with regard to culture, principles, politics, models, rights, concepts and structure in the new European private law.

Towards a European Civil Code

In 1989 the European Parliament called for the elaboration of a European Civil Code and although the European Commission has not yet shown much enthusiasm for this idea, many legal scholars consider it to be a great challenge. The desirability and possible content of a European Civil Code. The book is divided into two parts. The first part examines the general issues which concern the unification of private law in Europe. private law that were considered to be appropriate for a unification on a European level. Because of the numerous reference made throughout the book to the UNIDROIT Principles for International Commercial Contracts and to the Principles of European Contract Law, these texts have been reproduced in an annex to this book.

Towards a European Civil Code

Compares national concepts of social justice with the developing European concept of access justice.

The Politics of Justice in European Private Law

In this volume, the Study Group and the *Acquis* Group present the first academic Draft of a Common Frame of Reference (DCFR). The Draft is based in part on a revised version of the Principles of European Contract Law (PECL) and contains Principles, Definitions and Model Rules of European Private Law in an interim outline edition. It covers the books on contracts and other juridical acts, obligations and corresponding rights, certain specific contracts, and non-contractual obligations. One purpose of the text is to provide material for a possible "political" Common Frame of Reference (CFR) which was called for by the European Commission's Action Plan on a More Coherent European Contract Law of January 2003.

Towards a European Civil Code

Over the past two decades, civil society has played a pivotal role in Europe, from the demise of Communist rule to the reunification of Europe, followed by the expansion of the single market to the reconstitution of democracy in the enlarged European Union. European civil society has emerged as a social space between EU governance and the citizens of the member states, populated by non-state agents claiming to represent, speak for or participate on behalf of the most varied social constituencies in EU decision making. This book consolidates European civil society research by re-viewing its conceptual, normative and empirical-analytical foundations. With contributors from political science to sociology to law, it captures the evolving practices of European civil society that stretch across the national (local), the European and the global realm. Developing an analytical framework that highlights the interplay between civil society building and polity building from above as well as from below, within the legal and institutional framework of the EU, they examine whether and how civil society can contribute to making democracy work in normative democratic theoretical perspectives. This book will be of interest to students and scholars of civil society, European politics, political science and sociology.

Principles, Definitions and Model Rules of European Private Law

Comprehensive and accessible, this book offers a concise synthesis of the evolution of the law in Western Europe, from ancient Rome to the beginning of the twentieth century. It situates law in the wider framework of Europe's political, economic, social and cultural developments.

The New Politics of European Civil Society

This historical introduction to the civil law tradition considers the political and cultural context of Europe's legal history.

The History of Law in Europe

This book outlines the fundamentals of European civil law for readers more familiar with common law jurisdictions such as Australia, New Zealand, the UK and the US. This fully revised and updated second edition retains the successful structure of the first. The four chapters in Part A provide the general framework, covering the concept and method of comparative law, historical foundations, the concept of a civil code and codification, and the role of legislature and the judiciary. More specific and practical material is provided in Part B, with chapters on the law of contract, the law of tort, labour law, commercial law and court procedure. Part C looks to the future, examining differences between civil law and common law and the impact of the European Union. The focus throughout is on private law, particularly the civil laws of France and Germany, except where European Community law has made inroads into the (private) civil law. Each chapter thus incorporates the relevant materials on European Community law.

European Legal History

European codification of private law is the talk of the day. The European Parliament favors it, the European Commission supports it, and many legal scholars are already working on it. This book addresses the forthcoming European codification from the perspective of previous codifications and their origin. Several current codifications, such as the French Code civil and the Austrian ABGB, found their origin in what can be referred to as 'state formation.' As uniformity was perceived to be crucial for the formation of a modern state, unification of law became an important goal. Codification was an excellent means to achieve this goal. The very essence of these codifications served to establish the central government as the legislative authority throughout its territory. Historical enquiry of these processes of codification reveals elements and arguments that are reminiscent of those encountered in the current endeavors to achieve a European codification of private law. An understanding of their history is essential to the understanding of the current political processes in European codification.

Fundamentals of European Civil Law

This volume makes a contribution to the ongoing lively discussion on European constitutionalism by offering a new perspective and a new interpretation of European constitutional plurality. The book combines diverse disciplinary approaches to the constitutional debate. It brings together complementing contributions from scholars of European politics, economics, and sociology, as well as established scholars from various fields of law. Moreover, it provides analytical clarity to the discussion and combines theory with more practical and critical approaches that make use of the constitutional toolbox in analysing the tensions between the different constitutions. The collection is a valuable point of reference not only for scholars interested in European studies but also for graduate and post-graduate students.

The Politics of European Codification

The book is a must read for anybody interested in the future development of European private law. European Private Law News This volume contains a valuable collection of essays by a group of reputable academics, each dealing with a particular aspect of the development of a substantive law of contract at European level. The contributors have a variety of interests and perspectives. The topic is clearly of great current interest throughout the European Union and beyond. Peter Stone, University of Essex, UK European Private Law after the Common Frame of Reference brings together several interesting contributions from a distinguished group of scholars, and sheds light on the important issue of legal harmonization from an interdisciplinary and comparative perspective. Francesco Parisi, University of Minnesota, US and University of Bologna, Italy The Common Frame of Reference has several potential functions, some reconcilable, others mutually exclusive. Its size, its shape, its true

legal nature and its content all remain contested. Modest or ambitious, toolbox or code-in-waiting? Its chameleon character is its strength and simultaneously its weakness, and equally the reason why it has attracted such attention. In this book the editors have assembled a veritable who's who in the field and it is a terrific read. Stephen Weatherill, University of Oxford, UK This book paves the way for, and initiates, the second-generation of research in European private law subsequent to the Draft Common Frame of Reference (DCFR) needed for the 21st century. The book gives a voice to the growing dissatisfaction in academic discourse that the DCFR, as it stands in 2009, does not actually represent the condensed available knowledge on the possible future of European private law. The contributions in this book focus on the legitimacy of law making through academics both now and in the future, and on the possible conceptual choices which will affect the future of European private law. Drawing on experience gained from the DCFR the authors advocate the competition of ideas and concepts. This fascinating book will be a must-read for European lawyers, private lawyers in the Member States and academics dealing with conceptual issues of the future of the national and the European private law. Advanced students in both law and international business will also find this book invaluable, as will US scholars interested in the US EU comparison of different legal orders.

The Many Constitutions of Europe

The research conducted by the Study Group on a European Civil Code seeks to advance the process of Europeanisation of private law by drafting a set of common European principles which are especially relevant for the functioning of the common market. The aim is the creation of a European Civil Code, or a Common Frame of Reference, to furnish each of the national jurisdictions a framework of rules of private international law.

European Private Law After the Common Frame of Reference

This study focuses on a rapidly developing, but still highly controversial, area of EU law: the emergence of general principles with constitutional relevance for EU civil law guiding its interpretation, gap filling, and legality control. The book brings to light seven principles in the case law of the Court of Justice of the European Union and in the Charter of Fundamental Rights. Principles 1, 2, and 3 on framed autonomy, protection of the weaker party, and non-discrimination are now part of substantive EU law, mainly contract law. Principle 4 on effectiveness, together with the principle of equivalence, is an "old acquaintance" of EU law and has mostly to do with procedures, but can also be extended to cover substantive and remedial matters. Principles 5 and 6 on balancing and proportionality are primarily concerned with methodological questions: the first has to do with judicial interpretation and application of EU civil law, the second with legal-political questions on the future of a (questionable) codified or optional EU civil law, in particular sales law. Finally, Principle 7 on good faith is still an emerging principle, but is gradually gaining importance. This book will allow the reader to understand and to assess the current evolution of EU civil law, in days where its autonomous character is increasingly recognized in the case law of the Court, and where the Charter is having a growing impact on its constitutional foundations.

Principles of European Law

In all legal systems of the European Union the law of contract and the law of tort form the main pillars of the law of obligations. Legal history and comparative law show, however, that it is not possible to cope with these two bodies of rules alone – even if their scope of application is generously conceived. Another part of the law of obligations, alongside the law of unjustified enrichment, which to some extent lies “between” contract and tort and fills the gaps that those areas of the law leave behind, is subject of this Book. The Study Group on a European Civil Code has drafted Principles relating to the unsolicited and voluntary undertaking of another's affairs on the basis of a reasonable ground for intervention: “Principles of European Law: Benevolent Intervention in Another's Affairs”.

General Principles of EU Civil Law

Does the European Union need a Civil Code? Like a dark cloud, this question hovers over debates about the future of private law in Europe. Few advocate explicitly the adoption of a civil code in the immediate future, yet many have taken instrumental steps along a road that seems to lead only in that direction. Those steps, - whether they be in the task of discovering common core of principles of private law among national legal systems,¹ or producing a systematic body of principles such as the Principles of European Contract Law² and the Draft Common Frame of Reference of rules and principles for

the law of obligations,³ or augmenting the scope of Directives to include more and more types of transactions, - all have the same direction of travel towards a comprehensive European set of rules governing contracts and related legal obligations. Although these efforts are fascinating intellectual ventures and may prove useful for some purposes, it is important to ask whether the European Union really needs to go on this journey towards a Civil Code.

Benevolent Intervention in Another's Affairs

Since its original publication ten years ago, *Towards a European Civil Code* has become an international classic. It is both a preeminent reference in the debate on the future of European private law, and a standard text in legal education in many European universities. This third, fully revised and expanded edition includes new contributions on such important matters as the following: constitutionalisation; social concerns; economic analysis; arguments against a European civil code; e-commerce; and sales, service and insurance contracts. All forty four chapters have been brought fully up to date with European and national developments, making *Towards a European Civil Code* the cornerstone in any endeavour involving issues in European private law.

Why Europe Needs a Civil Code

In the first book to offer a comprehensive analysis of family law in the European Union, McGlynn argues that a traditional concept of 'family' which has many adverse effects - on individuals, on families (in all their diverse forms), and indeed on the economic ambitions of the EU is forming the basis for the little-recognised and under-researched field of EU family law. This book examines three different aspects of family life - childhood, parenthood and partnerships - and critically analyses existing EU law in relation to each. It examines the emerging field of EU family law, providing a highly sceptical account of recent developments and a robust challenge to the arguments in favour of the codification of European civil law, including family law.

Towards a European Civil Code

This historical introduction to the civil law tradition considers the political and cultural context of Europe's legal history.

Families and the European Union

The research of the Study Group on a European Civil Code seeks to advance the process of Europeanisation of private law by drafting a set of common European principles which are relevant for the functioning of the common market. The principles provide national jurisdictions with a grid reference for the future development of the law.

European Legal History

This anthology illustrates how law and economics is developing in Europe and what opportunities and problems - both in general and specific legal fields - are associated with this approach within the legal traditions of European countries. The first part illuminates the differences in the development and reception of the economic analysis of law in the American Common Law system and in the continental European Civil Law system. The second part focuses on the different ways of thinking of lawyers and economists, which clash in economic analysis of law. The third part is devoted to legal transplants, which often accompany the reception of law and economics from the United States. Finally, the fourth part focuses on the role economic analysis plays in the law of the European Union. This anthology with its 14 essays from young European legal scholars is an important milestone in establishing a European law and economics culture and tradition.

Principles of European Law

This is a remarkably ambitious work of scholarship. What can Europe bring to private law, and what can it take away? And how do we shape the institutional design of the governance model(s) that comprise Europe? A stellar collection of contributors provides important fresh insights into the evolving and varied patterns according to which private law is generated in Europe. Stephen Weatherill, Somerville College, Oxford, UK The debate concerning the desirability and modes of harmonisation of European Private Law (EPL) has, until now, been mainly concerned with substantive rules. The link between rules and institutions suggests that governance of both the process of harmonisation and its outcome

is necessary. This book covers various perspectives on the challenge of designing governance for EPL: the implications of a multi-level system in terms of competences, the interplay between market integration and regulation, the legitimacy of private law making, the importance of self-regulation, the usefulness of conflict of law rules, the role of intergovernmental institutions, and the aftermath of enlargement. In addressing these, the book's achievements are to successfully link two areas of scholarship that have so far remained separate, EPL and new modes of governance, and to address institutional reforms. The contributions offer different proposals to improve governance: the creation of a European Law institute, the improvement of judicial cooperation among national courts, the use of committees for implementation of EPL. Suggesting practical institutional reforms that can improve the process of Europeanisation of private law, this book will be of great interest to scholars of law, politics, political science, sociology and economics. It will also appeal to policymakers, and members of both European institutions and national institutions dealing with European matters.

Law and Economics in Europe

"Unjustified enrichment" is one of the three main non-contractual obligations dealt with in the DCFR. In recent years unjustified enrichment has been one of the most intellectually animated areas of private law. In an area of law whose territory is still partially uncharted and whose boundaries are contested, this volume of Principles of European Law will be invaluable for academic analysis of the law and its development by the courts. During the drafting process, comparative material from over 25 different EU jurisdictions has been taken into account. The work therefore is not only a presentation of a future model for European rules to come but provides also a fairly detailed indication of the present legal situation in the Member States.

Making European Private Law

Amid widespread awareness and discussion of "the democratic deficit" and "shrinking civil space," the role of nongovernmental organizations (NGOs) becomes increasingly important. Yet the precise legal status of such bodies is ill-defined. Here, for the first time, is a thorough commentary and analysis of the position of NGOs and European civil society in the European Union (EU) constitutional system, bringing to the fore existing and desirable means of public participation in EU lawmaking. Recognizing that NGOs have historically been designed to meet the ends of civil society, the analysis focuses on the following topics and issues: means in EU law of advocating for the collective interests of civil society; unofficial means of influencing the EU institutions; access to documents and the European Citizens' Initiative as means of exerting pressure on EU legislation; relations between the EU institutions and NGOs, including lobbying activities; bringing actions in the common good before courts and other institutions; the special role of NGOs in environmental protection; complaints to the Commission and the European Ombudsman; EU funding for NGOs; and transboundary philanthropy. Drawing on a broad spectrum of sources of law, including CJEU case law and relevant legal literature, the book offers insightful proposals leading to the democratization of the EU's internal procedures that will allow enhanced cooperation of civil society representatives across national borders. In its thorough examination of legal tools that can respond to the "democratic deficit," this book makes a distinctive contribution to the public debate on the future of the European Union, especially in the context of emerging threats to further integration. It will prove of great value not only to civil activists, academics and policymakers but also to everyone interested in European integration and affordance for social participation.

Unjustified Enrichment

General Principles of EU Civil Law focuses on a rapidly developing but still highly controversial area of EU law: the emergence of general principles with constitutional relevance for EU civil law, guiding its interpretation, gap filling and legality control. This study brings to light seven principles in the case law of the Court of Justice of the European Union and in the Charter of Fundamental Rights. Principles 1 to 3 on framed autonomy, protection of the weaker party and non-discrimination are now part of substantive EU law, mainly contract law. Principle 4 on effectiveness, together with the principle of equivalence, is an "old acquaintance" of EU law and has mostly to do with procedures but can also be extended to cover substantive and remedial matters. Principles 5 and 6 on balancing and proportionality are primarily concerned with methodological questions: the first has to do with judicial interpretation and application of EU civil law, the second with legal-political questions on the future of a (questionable) codified or optional EU civil law, in particular sales law. Finally, principle 7 on good faith is still an emerging principle

but is gradually gaining importance. This book will allow the reader to understand and to assess the current evolution of EU civil law in days where its autonomous character is increasingly recognised in the case law of the Court, and where the Charter is having a growing impact on its constitutional foundations. About this book 'The topic is highly relevant these days and orders our case-law in ways that only a proficient academic like Norbert Reich is capable of doing. That effort will in turn be taken into account in the further development of the case-law.' Koen Lenaerts, Vice-President of the Court of Justice of the European Union 'Professor Reich has written a book that is not merely rich and broad in ambition, but in fact genuinely ground-breaking. In identifying, explaining and analysing seven key principles of EU civil law, he has drawn us a map that will help scholars to find their way through the forbiddingly dense jungle populated by EU Treaty provisions, the legislative acquis and the Court's case law. And, in showing how proudly 'social' much of the EU's protective regulation affecting private parties truly is, he has set a tone that EU policymakers should embrace.' Stephen Weatherill, Jacques Delors Professor of European Law, University of Oxford 'For the private lawyer, probably the most interesting recent d ...

A Legal Analysis of NGOs and European Civil Society

This volume contains thoughts on the issue of Codification of European Private Law and on the present state of European Private Law by one of the protagonists of the debate that is unfolding in Europe. Taking a sometimes sharply critical view, Professor Mattei attempts to unveil what he considers biases, strategies, and ideologies that affect the European legal process. The work attempts to open a basic and genuine political debate between legal scholars, which he considers an unavoidable prerequisite of any major reform process in private law. Challenging the claim of technocratic neutrality shared by much of the most influential European legal academy, the author uses the tools of Comparative Law and Economics to set priorities on the table and to show some of the real stakes of the present process. The work explores fundamental areas of European private law, from the sources' to contracts' to trust law.

General Principles of EU Civil Law

The Principles of European Contract Law, prepared by the so-called Lando Commission, today constitute the most advanced project on the harmonisation of European private law. As well as providing a set of rules which could facilitate cross-border trade within Europe, the Principles can be seen as a modern *lex mercatoria* which, for example, could be referred to by arbitrators deciding a case according to internationally accepted principles of law. Furthermore, the Principles provide a framework for EU legislation on contract law and, more importantly, they can be viewed as a first step towards a European Civil Code. They may also prove to be a catalyst for the development of national legislation, judicial decisions and legal doctrine. This new title, which follows the first volume covering Parts I and II of the Principles, includes chapters on plurality of parties, assignment of claims, transfer of contract, set-off, prescription, illegality and conditions. It provides a systematic overview of the Principles in comparison with Dutch law, which will be of interest not only in the Netherlands but also to lawyers in other countries who need to gain a clearer understanding of the Dutch contract law system.

The European Codification Process

R. C. van Caenegem considers the historical reasons behind European legal diversity.

Principles, Definitions and Model Rules of European Private Law

Civil, economic, political and social rights are at the centre of the concept of European citizenship. In this volume, the focus is on the political-constitutional dimension of European citizenship, which is discussed from the perspective of several disciplines – history, constitutional law and political science. It provides a multi-faceted account of the evolution of European citizenship and its institutionalization, explaining why certain rights came into existence at a certain time and focussing on several key actors involved, such as the European Court of Justice

The Principles of European Contract Law (Part III) and Dutch Law

European Private Law: Foreword

