



*Making European*

# PRIVATE LAW

GOVERNANCE DESIGN



*Edited by*

Fabrizio Cafaggi *and* Horatia Muir-Watt

# The Making Of European Private Law

**Leone Niglia**



## **The Making Of European Private Law:**

*Making European Private Law* Fabrizio Cafaggi, Horatia Muir Watt, 2010-01-01 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

*The Making of European Private Law* J. M. Smits, 2002 The private law of the Member States of the European Union has become more and more European The fact that the European Union is making ever more use of directives as an instrument to achieve private law goals is in this context not the most important development Of much more substance is the fact that one increasingly realises that a uniform European private law has to be created in one way or another in the near future if a truly common European market is to function at all Over the last decade Europe has witnessed the emergence of a vigorous debate about the need for and the feasibility of a future European *ius commune* in the field of private law This book critically discusses this debate and provides a systematic overview of the various initiatives taken and describes the fragmentary European private law that already exists by way of European directives international conventions etc In addition the author aims at making a contribution to the debate by suggesting that the experience good or bad of the so called mixed legal systems is of great importance to the European private law venture and to the development of a uniform private law for Europe This idea is supported by insights from Law Economics and illustrated by South African law in particular This idea of European private law as a mixed legal system is then applied to the law of contracts torts and property This book takes up the challenge to give a critical examination on the various methods of creating this *ius commune* A detailed table of contents

list of abbreviations bibliography table of cases and index complete the book and make it a valuable study for everyone interested in European private law      *The Foundations of European Private Law* Roger Brownsword, Hans-W. Micklitz, Leone Niglia, Stephen Weatherill, 2011-09-19 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      **Uncovering European Private Law** Marija Bartl, Laura Burgers, Chantal Mak, 2025-06-05

Aimed at bridging a crucial gap in legal education *Uncovering European Private Law* provides a comprehensive introduction to the evolving field of European private law This innovative handbook addresses the interplay of national European and transnational rules governing relationships between private actors including individuals and businesses Designed with students in mind this volume not only covers foundational concepts but also explores cutting edge developments in areas such as contract tort property and company law What sets this handbook apart is its contextual approach By integrating societal and theoretical perspectives it encourages students to critically evaluate private law s role in addressing global challenges like digitalization sustainability and globalization Gathering the expertise of over twenty international law scholars the handbook reflects the expertise of academics deeply engaged in teaching and research With structured chapters and accessible narratives this handbook replaces piecemeal materials previously used in courses It offers coherence and depth making it an essential resource for understanding the legal frameworks that shape commerce legal practice and broader societal issues Whether for mandatory or elective courses this guide empowers students to navigate and critically assess the dynamic field of European private law providing an essential resource for the private lawyers of the future

**European Private Law After the Common Frame of Reference** Hans W. Micklitz, Fabrizio Cafaggi, 2010-01-01 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 Regulatory Function of European Private Law** Fabrizio Cafaggi, Horatia Muir Watt, 2009-01-01 In twelve topical papers written by renowned experts in distinct areas of the law the reader will find out how private law and private international law instruments can serve public policy goals such as the protection of the environment product safety or services of general economic interest and how these instruments interact with regulation in the proper sense A must for those who want to explore the borderline if it exists between public and private law in the EU Jules Stuyck Leuven University Belgium In the context of the current debate on the desirability and process of forming European private law EPL this book considers one fundamental question addressing its descriptive and normative dimension does and should EPL pursue regulatory objectives beyond market integration The editors argue that because national categories are of little help in grasping the characteristics of a multi level regulatory system it is necessary to link three perspectives private law regulation and conflict of laws This book explores this interaction in four distinct fields product liability environmental protection public utilities and e commerce The results show that EPL is highly regulatory and that the implications of this change have not been adequately considered by institutions and by scholars The Regulatory Function of European Private Law will be of great interest to academics of law as well as to private and public lawyers and European policymakers Constructing Modern European Private Law Ivan Sammut, 2016-09-23 The Europeanisation of European Private Law EPL is an ongoing process that has gained momentum with the communitarisation of judicial cooperation in civil and commercial matters with the Amsterdam Treaty This work examines the governance structure of EPL It proves that more can be achieved towards the

Europeanisation of private law through a new approach involving innovative modes of governance in EPL In order to test this hypothesis it is necessary to look at this exercise from three different angles The first angle provides a study about the tools and the context with which one can further Europeanise private law and bridge the gaps between the main legal families common law and civil law The second angle encompasses a study of what has and what has not been achieved in the development of EPL by looking at both EU and non EU initiatives The final angle then examines the role of governance in the future development of EPL As such this study confirms that the further Europeanisation of EPL requires a multi level mode of governance confirming the traditional supra national Community Method mode of governance in EPL with the introduction of intra governmental innovative methods in EPL such as the Open Method of Coordination OMC and soft law These innovative modes together with the traditional mode of governance can take forward the development of EPL so that it can better serve the needs of the European legal community in the future

Judicial Cooperation in European Private Law Fabrizio Cafaggi,,Stephanie Law,2017-05-26 Notwithstanding recent increases in the scope for judicial cooperation and dialogue between European courts little research has been undertaken into the impact of the jurisprudence of the European Court of Justice and the dialogue that arises therefrom in national legal systems between courts and regulators This coherent collection of original chapters provides unique insights into these developments with a particular focus on consumer law from a broad range of stakeholders including academics and judges from the EU and the US

The New European Private Law:Vol. 3:Essays on the Future of Private Law in Europe Martijn Hesselink,2002-10-16 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

*The Making of European Private Law* Luigi Moccia,2013 Table of Contents Foreword List of Authors European Private Law Why How What and Who Ole Lando The Europeanisation of Private Law Problems and Perspectives B n dicte Fauvarque Cosson The Commission Proposal for a Regulation on a Common European Sales Law CESL Too Broad or not Broad Enough Hans Wolfgang Micklitz Norbert Reich The Legal Basis of European Private Law in the Light of EU Constitutionalisation Christiane C Wendehorst European Law From Market to Citizenship Luigi Moccia A Common European Sales Law CESL for Business to Business Contracts Hugh Beale The Instruments for Implementing European Private Law The Infl uence of the ECJ Case Law on the Development and Formation of European Private Law Verica Trstenjak Optional Law for Firms and Consumers Economic Benefi ts of Opting into the Common European Sales Law Juan Jos Ganuza Fernando Gomez European Consumer Law and its Consolidation Luc Grynbaum The Internal Relationships of EU

Consumer Contract Laws Unfair Contract Terms Unfair Commercial Practices and CESL Simon Whittaker European Property Law Transfer of Ownership of Movables Brigitta Lurger From Euratom Property Law to European Union Property Law A Concise Overview of the Development Towards a European Property Law Sjef van Erp Which Future for the European Law of Successions Francesco Paolo Traisci Interpretation of Contracts in European Private Law Eric Clive Incorporation and Unfairness of Standard Contract Terms Under the Proposal for a Common European Sales Law Marco B M Loos The Application of the CESL to a Contract for the Supply of Digital Content e.g. Software Jerzy Pisuli ski A Critical First Glance at the Common European Sales Law Project by the Digital Consumer Law Approach Oreste M Calliano     The Structural Transformation of European Private Law Leone Niglia, 2023-06-15 This book proposes a new analysis of the transformation of Europe through integration exactly 30 years after the beginning of transformation scholarship It consists of a reconstruction of the development and present condition of European integration in relation to private ordering Looking at the interface between on the one hand the EU constitutional order and on the other hand private ordering the book recounts three major structural transformations over the last six decades Delving into the private law areas most exposed to the current modernisation wave consumer law internal market lex mercatoria digitisation artificial intelligence data protection standardised contracts finance and political economy and labour the book critically explores a reconfiguration of Europe s constitutional structures relative to and that results from what to some appears to be an almost irresistible rise of private ordering through a transformed hermeneutics balancing This is a magisterial survey of European law European private law and comparative law seen through a pathbreaking comparative methodology labelled juridical comparative hermeneutics within civil law systems and across the civil common law divide which offers innovative analytical tools that afford a deep understanding of the evolution of the disciplines     **The Politics of Justice in European Private Law** Hans-W Micklitz, 2018-11-15 Compares national concepts of social justice with the developing European concept of access justice

**Constitutionalization of European Private Law** Hans-W. Micklitz, 2014 One of the most topical questions in the legal systems is whether and to what extent fundamental rights impact our rights and obligations in our contractual relations The European Union has integrated the Charter of Fundamental Rights into the Treaties of Rome and Lisbon This book highlights whether and to what extent fundamental rights affect the position of citizens generally and in various fields of law such as private contractual law labour law financial services intellectual property rights and the judicial protection in courts     *New Directions in European Private Law* Takis Tridimas, Mateja Durovic, 2021-05-20 This book brings together leading scholars and practitioners to explore contemporary challenges in the field of European private law identify problems and propose solutions The first section reassesses the existing theoretical framework and traditional legal scholarship on which European private law has developed The book then goes on to examine important and practical topics of geo blocking and standardisation in the context of recent legislative developments and the CJEU case law The third section assesses the

challenging subject of adequate regulation of online platforms and sharing economy that has been continuously addressed in the recent years by European private law A fourth section deals with the regulatory challenges brought by an increasing development of artificial intelligence and blockchain technology and the question of liability The final section examines recent European legislative developments in the area of digital goods and digital content and identifies potential future policy directions in which the European private law may develop in the future

*Pluralism and European Private Law* Leone Niglia, 2013-01-29 European private law has hitherto tended to be conceptualised firmly around ideas of unity and harmony Yet the discourse within other areas of European law notably constitutional law scholarship visibly adopts pluralist perspectives This book seeks to bridge the gap between public and private law by looking at European private law from various pluralist positions and by investigating old and new ways in which to understand legal pluralism in general It fills a gap in the wide literature on legal pluralism as the first book entirely dedicated to offering an insight into legal pluralism from the vantage point of the private law domain The book addresses critically issues such as what pluralism really means in private law and what conceptions of pluralism it embodies including discussion about the outer boundaries of any of the pluralist understandings Contributions address comparative critical historical theoretical and normative aspects The book provides an opportunity to engage innovatively with problematic conceptual issues which inform the work of European private law scholars including the debate on the Common Frame of Reference Project of the European Commission

**The Struggle for European Private Law** Leone Niglia, 2015-03-26 The European codification project has rapidly gathered pace since the turn of the century This monograph considers the codification project in light of a series of broader analytical frameworks comparative historical and constitutional which make modern codification phenomena intelligible This new reading across fields renders the European codification project currently being promoted through the Common Frame of Reference and the Optional Sales Law Code proposal vulnerable to constitutionally grounded criticism traceable to normative considerations of private law authority and legitimacy Arguing that modern codification phenomena are more complex than positivist socio legal and historical approaches have suggested over the past two centuries the book stages a pathbreaking method of analysis of the law discourse nomos centred which questions at once the reduction of private law to legislation and of law to power and on this basis redefines the ways in which to counter law's disintegration and crisis in the context of Europeanisation Professor Niglia reconstructs the European codification project as a complex structure of government in the making that embodies a set of contingent world views excludes alternatives challenges the plurality of private laws and entrenches conflicts that pertain not only to form codification de codification recodification but also to dilemmas implicated in determining the substantive orientation of European private law The book investigates the position of the codifiers and their discontents in the shadow of the codification strategy pursued by the European Commission noting a new turn in the struggle over the configuration of private law which has taken place since the Savigny Thibaut dispute of 1814 which this



book critically revisits exactly two centuries later This monograph is particularly aimed at readers interested in exploring the complexities and interconnections of the supposedly separate realms of comparative law European law private law legal history constitutional law sociology of law and last but not least legal theory and jurisprudence

**The Transformation of European Private Law** James Devenney, Mel Kenny, 2013-10-24 A critical overview of the Europeanisation of private law at a watershed moment a point of punctuated equilibrium

**First Or Second Best? Judicial Law-Making in European Private Law** Chantal Mak, 2016 This paper examines the interaction among institutions in European private law in times of societal change It is submitted that a translation of national constitutional models of division of powers to the European Union cannot fully do justice to the nature of the interplay of courts and legislatures in Europe's multi level private legal order A clarification of the legal political significance of judicial law making against the backdrop of the economic crisis can better explain judicial activism in certain areas of European private law It also serves to address the re definition of the principle of democracy in this field and the possible contribution of democratic experimentalism This then provides starting points for a re imagination of the judiciary's role in the communicative process of generating legal normativity in European private law

**The Cambridge Companion to European Union Private Law** Christian Twigg-Flesner, 2010-05-20 A critical 2010 introduction to European Private Law written by the leading scholars in the field

**The Involvement of EU Law in Private Law Relationships** Dorota Leczykiewicz, Stephen Weatherill, 2013-03-12 The involvement of the EU in regulating private conduct and relationships between individuals is increasing As a result EU law affects the scope of private autonomy in ever wider contexts sparking tensions with fundamental concepts of national private law systems This volume offers a descriptive and normative account of the involvement of EU law in private law relationships The recurring theme in the collected papers is the scope of policy objectives which are apt to legitimise the European Union's as yet unsystematic tendency to serve as a source of restrictions of private autonomy The nature and purpose of the involvement of European Union law in private law relationships is investigated by the authors from both the substantive and the constitutional perspective The papers look at such sectors regulating private law relationships as consumer law labour law competition law equal treatment law and the law of remedies While focusing on private law relationships the authors investigate more general concepts of EU law such as the Internal Market freedoms and general principles of law and the different modes of ensuring the effective application of EU secondary law

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