Challenges in Legal Education and the Development of a New European Private Law

By Bram Akkermans[*]

A. Introduction

These are exciting times for European private law. After many years of research the publication of the Draft Common Frame of Reference in the form of the interim outline edition of 2008 and, in particular, of the Outline Edition in 2009, is set to change the landscape of legal education in private law.[1] Although many universities are likely to continue a traditional curriculum based on national law, possibly with comparative influences, for some universities this will be an occasion to move from a comparative to more truly European curriculum. The change to a European-based curriculum is controversial in legal education as the need to train nationally qualified lawyers remains.[2] However, there are some experiences with the setting up of a European-based curriculum that might demonstrate a possibility of how to do this.[3]

Generally, there are three types of curricula. First, there is the national law curriculum that is taught in the national language by nationally trained educators. These days, it is hardly possible to teach private law without any comparative remarks. Second, there is the comparative law curriculum, either taught in the national language or, in the *lingua franca* of comparative law, English. These comparative law programmes have been very successful in the last decades. In some legal orders it is also possible to develop a third type of curriculum. The European Union, with its supranational legal order, especially offers an opportunity to train lawyers that are less dependent on a single legal system. This

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[1] PRINCIPLES, DEFINITIONS AND MODEL RULES OF EUROPEAN PRIVATE LAW. DRAFT COMMON FRAME OF REFERENCE, INTERIM OUTLINE EDITION. (Christian von Bar *et al.* eds., 2008); PRINCIPLES, DEFINITIONS AND MODEL RULES OF EUROPEAN PRIVATE LAW. DRAFT COMMON FRAME OF REFERENCE, OUTLINE EDITION. (Christian von Bar *et al.* eds., 2009).,

[2] See, on this, SJOERD CLAESSENS, FREE MOVEMENT OF LAWYERS IN THE EUROPEAN UNION (2008).

[3] The author was a member of the Curriculum Committee setting up a new English language bachelor programme (LL.B.) named the Euroepan Law School – English Track, at Maastricht University. Of course, many other transnational law degree programmes exist.

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type of program is generally taught in English and focuses on comparative law and European law. However, because of the legal framework in which legal education takes place and because of the expertise needed to teach this type of curriculum, these programmes are rare.[4]

Comparative and European private law takes a very important position in the programmes of the second and third type. With its, compared to other legal disciplines, well developed methodology and vast body of research already carried out, comparative private law offers an excellent opportunity to teach students how to do comparative law as well as to train them to work with abstract legal concepts.[5] The Europeanisation of private law, i..e the increasing body of European Union legislation and case law of the European Court of Justice in this area, in the last decades adds a third element to this in the form of a combination of European Union law and private law: European Private Law. This element has in particular become relevant in the curriculum of the third type that seeks to combine comparative (private) law with European law. In fact, I will argue, European Union Law adds content to any curriculum in such a way that it can no longer be avoided. It should therefore become included in every curriculum, of any type, from now on. The development of a European private law serves as an example of this, but similar developments can be found in the law of civil procedure, or in criminal law.[6]

B. The Development of Private Law and its Challenges on Legal Education

It is not entirely clear when it began, but at a certain point in the last 50 years legal academics started to compare systems of private law.[7] This development came after a

[4] The Maastricht European Law School – English Track (ELS-ET) seems to be a unique programme in the non-English speaking world. Other programmes include, *inter alia*, the Hanse Law School programme between the universities of Groningen (Netherlands), Bremen (Germany) and Oldenburg (Germany) and the Transnational Degree Programme at Utrecht University (Netherlands) and Washington University School of Law (USA). See, P. Zumbansen, Transnational Law, in ENCYCLOPEDIA OF COMPARATIVE LAW, 748-750 (Jan M. Smits ed., 2006).

[5] For an overview of the state of affairs in comparative private law, including methodology, see, THE OXFORD HANDBOOK OF COMPARATIVE LAW (M. Reimann & R. Zimmermann eds.,2006).

[6] See, for instance, GREEN PAPER ON CONSUMER COLLECTIVE REDRESS COM(2008) 794 FINAL, CONSULTATION PAPER ON CONSUMER COLLECTIVE REDRESS FOR THE HEARING OF 27 MAY 2009, Available at: http://ec.europa.eu/consumers/redress_cons/collective_redress_en.htm, COUNCIL DECISION OF 12 FEBRUARY 2007 ESTABLISHING FOR THE PERIOD 2007 TO 2013, AS PART OF THE GENERAL PROGRAMME ON FUNDAMENTAL RIGHTS AND JUSTICE, THE SPECIFIC PROGRAMME 'CRIMINAL JUSTICE', OJ 24.2.2007, L58/17, THE COMMISSION'S ANNUAL WORK PROGRAMME 2009 ON CRIMINAL JUSTICE OF 28 SEPTEMBER 2008, Of course, a full curriculum in this new style would also have to include other areas of law. This contribution merely seeks to explore some of the possibilities the developments in private law offer on legal education. Potentially, other areas of law could be inspired from these developments.

[7] Early works include the famous RENÉ DAVID, TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL COMPARÉ: INTRODUCTION À L'ÉTUDE DE DROITS ÉTRANGERS ET À LA MÉTHODE COMPARATIVE (1950); see, also, J.M. Smits, *A European Private Law as a Mixed*

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period in which, mostly due to the national codes of private law made in most of the EU Member States, legal science had become strictly national.[8] Legal concepts and solutions were perceived as characteristic for the specific legal system, and hardly any look was taken at other systems. The rise of comparative law as a subject of study meant the re-discovery of the period of the *Ius Commune*, in which there has been a common law of Europe, as well as renewed interest in Roman law, the law that once had applied throughout Europe. Moreover, comparisons between legal systems in Europe, both between civil law systems and between common law and civil law systems showed great similarities in certain areas of law. In particular the law of obligations, more specifically the law of contract received much attention. This renewed interest led to great publications such as Zimmermann's Law of Obligations, Glenn's work on legal traditions, and much more.[9] Moreover, it led to dreams about reunifying Europe through a code of private law for the European Union. Parallels were drawn to the unification of the Germanic States in the 19th century and the role a unification of private law had played there.[10] Moreover, parallels were drawn to the discussion on what has become known as a top down or bottom up harmonisation. Of course, there was also opposition to these ideas, in particular in the person of Pierre Legrand, who argued that legal systems cannot converge and that a European Civil Code was therefore unfeasible.[11]

In order for a law school curriculum to connect to the state of affairs in those days, it was necessary to offer courses on legal history and comparative law and on comparative law itself. Moreover, some attention had to be paid to the law of the European Union, in this

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Legal System. Towards as Ius Commune throught the free movement of legal rules, 5 MAASTRICHT JOURNAL OF EUROPEAN AND COMPARATIVE LAW 328, 328-329 (1998).

[8] The exceptions are, of course, the law of England and Wales, the law of Scotland, Northern Ireland and the Republic of Ireland. These common law or, in case of Scotland, mixed legal systems, are generally uncodified legal systems. However, the characterisation that these systems have an isolated view and focus on their national tradition just as much applies. See, C. Donahue, *Comparative Law before the Code Napoléon*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW, 3 (M. Reimann & R. Zimmermann eds.,2006).

[9] REINHARD ZIMMERMANN, THE LAW OF OBLIGATIONS. ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION (1996), H. Patrick Glenn, *Legal Families and Legal Traditions*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW, 421 (M. Reimann & R. Zimmermann eds.,2006). See also, JAMES GORDLEY, FOUNDATIONS OF PRIVATE LAW. PROPERTY, TORT, CONTRACT, UNJUST ENRICHMENT (2006); JAMES GORDLEY AND ARTHUR TAYLOR VON MEHREN, AN INTRODUCTION TO THE COMPARATIVE STUDY OF PRIVATE LAW. READINGS, CASES, MATERIALS (2006).

[10] R. Zimmermann, *Savigny's Legacy; Legal History, Comparative Law, and the Emergence of a European Legal Science*, 112 LAW QUARTERLY REVIEW, 576 (1996); Reinhard Zimmermann, *Europeanization of Private Law'* in THE OXFORD HANDBOOK OF COMPARATIVE LAW, 539 (M. Reimann & R. Zimmermann eds.,2006).

[11] Pierre Legrand, *Sens Et Non-Sens D'un Code Civil Européen*, 4 REVUE INTERNATIONALE DE DROIT COMPARÉ, 779 (1996); Pierre Legrand, *European Legal Systems Are Not Converging*, 45 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, 52 (1996); Pierre Legrand, *Against a European Civil Code*, 60, 1 MODERN LAW REVIEW, 44 (1997).

respect in particular the drafting of Directives and Regulations that had an effect on the systems of private law in the Member States.[12]

The resistance against those focussed on achieving a harmonisation of law grew and more and more attention was paid to the difference between legal systems as well as the difficulties in achieving a civil code for Europe.[13] At the beginning of the debate the differences between civil law and common law had been central, but later the differences between civil law systems also became the focus of attention. For law school curricula this development was a golden opportunity to make diverse and original contributions in the course of a comparative law programme.[14] Academics could introduce the students to their own ideas and through that develop their own school of thought. As a result however, the content of the course differed very much depending on the school that was followed. These could vary from historical-oriented courses to courses almost strictly dealing with law and economics, but also in content from focussing on comparative law or on European Union law.

Depending on the country in which the course would be taught, the materials would be in one single language, for instance in English, German, Dutch, French or Italian, or would be a combination of any of these and more. Of course, the materials that could be offered would very much depend on the knowledge of the staff and of the students taking the course. However, offering materials from different jurisdictions, not necessarily in the same language, is crucial to convey the differences in legal approaches and concepts as well as to underline similarities in the approaches taken and the concepts used. It is therefore useful to underline both diversity as well as similarities in concepts and approaches. Using comparative literature from only one single jurisdiction will not likely lead to as complete a view of private law in the European Union as when sources from different jurisdictions are used.

From 2008 most of these problems potentially solved with the publication of the research results of the Study Group on a European Civil Code in the form of the Principles of European Law (PEL) and in the form of the Draft Common Frame of Reference (DCFR). These publications offer a solution to two typical problems in comparative private law teaching. First of all, the principles formulated are accompanied by a series of comparative notes that are the result of multiple years of research conducted by researchers from around Europe. The result is therefore a very rich source of comparative materials, all

[12] See, for example, J.M. Smits, *Supra* (note 7), 328-329.

[13] Gerhard Dannemann, *Comparative Law: Study of Similarities or Differences?*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW, 383 (M. Reimann & R. Zimmermann eds.,2006).

[14] See, for example, the work on legal transplants, M. Graziadei, *Comparative Law as the Study of Transplants and Receptions,* in: THE OXFORD HANDBOOK OF COMPARATIVE LAW, 441, 442-444 (M. Reimann & R. Zimmermann eds.,2006).

compiled in English and in one single volume per topic. For a comparative law curriculum these sources therefore offer, at least to those who master English, a solution to the search for comparative materials. Preferably combined with a set of other sources that are more nationally oriented, and perhaps also provide a critical view on the PEL and DCFR sources, the combination of materials should give its student a proper overview of the content of private law in the European Union.

Secondly and equally exciting, the research group has also set forth principles that either represent the law of the Member States or that offer, in the view of the researchers, the best rule. Although this approach as well as its results can be criticised from all sorts of viewpoints, they do offer an excellent teaching tool.[15] The discussion of a general principle or rule on a certain subject offers the student a view on what is likely a different solution from his own legal system, as well as raises the question whether the rule from the own legal system may fall under that European principle or rule. The first aspect concerns the more traditional aspect of using comparative law to create a better understanding of the own legal system. The second aspect creates awareness of the place of one's own legal system in an international legal order in development. It is in this latter aspect in particular that the most important contribution of the Study Group on a European Civil Code to legal education can be found.[16]

The principles and rules offer the possibility to develop curricula from the second type into curricula of the third type. Moreover, they offer justification to do so now that the European Commission seems to be taking the development of an actual European private law seriously.[17] Regardless of the opinion on the development of private law, it is the task of universities to be critical of these developments and to therefore deal with these documents. In doing so, they assist the further development of the discipline.

Nevertheless, there are challenges that this type of education faces. First of all, teaching such a subject requires a complete overview of the current state of development. However, such an overview is hardly held by one single academic, except perhaps those actually participating on a high level on the development of the Common Frame of

[15] N. Janssen and R. Zimmermann, *Restating the Acquis Communautaire? A Critical Examination of the "Principles of Existing EC Contract Law*, 71 MODERN LAW REVIEW 505 (2008) . Although also the use of the DCFR as a teaching tool has been criticised, see J.M. Smits, *The Draft Common Frame of Reference, Methodological Nationalism and the Way Forward*, in: 16 EUROPEAN REVIEW OF PRIVATE LAW 278 (2008).

[16] The study group itself also emphasizes the use of its document as a teaching tool. See Christian von Bar *et al.* (2009), *Supra* (note 1), 7.

[17] See, *inter alia*, THE EUROPEAN COMMISSION'S COMMUNICATION ON EUROPEAN CONTRACT LAW AND THE REVISION OF THE ACQUIS: THE WAY FORWARD COM' 651 (2004); FIRST ANNUAL PROGRESS REPORT ON THE COMMON FRAME OF Reference, 23 SEPTEMBER 2005COM, 456 (2005) GREEN PAPER ON THE REVIEW OF THE CONSUMER *ACQUIS*, 8 FEBRUARY 2007 COM, 744 (2006) and SECOND PROGRESS REPORT ON THE COMMON FRAME OF REFERENCE 25 JULY 2007 COM , 447 (2007).

Reference at the moment. Secondly, the existence of a large body of European Union law in this area does not only require knowledge on private law, but also knowledge of the law of the European Union. In order to deal with the effects of the European legal order, this knowledge should go beyond the standard knowledge of a generally trained lawyer, as it requires study and understanding of both the drafting process of legislation as well as the decisions of the European Court of Justice and, perhaps most importantly, their impact on national law. It is in the third type of curriculum in particular that all of these aspects are combined.

The Draft Common Frame of Reference (DCFR) combines the principles of European law (PEL) which are the result of comparative study of the laws of the Member States and the *Acquis* principles (ACQP). These second set of principles are drafted by the Research Group on Existing EC Contract Law (*Acquis* Group) and form a set of principles and rules derived from the existing body of EU legislation and case law of the European Court of Justice.[18] The DCFR offers a combination of both and should therefore be considered to include elements of national law as well as elements of European law. Understanding the principles and rules of the DCFR therefore requires extensive knowledge on both aspects.
Moreover, teaching any area of national private law increasingly requires knowledge on the law of the internal market in the European Union, in particular the rules dealing with free movement of goods, persons, services and capital, as well as EU competition law. A short example using private law may illustrate. In national private law scholarship the influence of European Union law on some areas, for example property law, is usually denied.[19] However, in recent years, the European Court of Justice has ruled on several occasions on cases dealing with property law. These include free movement of goods, but mostly the free movement of capital.[20] Especially concerning the free movement of capital, laws of the Member States governing the acquisition of ownership of a piece of land used as a secondary residence, have been struck down.[21] Moreover, European law also interferes in other private law relations. In German law, for instance, it is possible to use a

[18] On the *Acquis* Principles (ACQP) and the drafting process see C. Twigg-Flesner, *The Acquis Principles: an insider's critical reflections on the drafting process*, in:. THEORY AND PRACTICE OF HARMONISATION, (C. Baasch Andersen, M. Andeneas eds ,forthcomming), available at at: http://ssrn.com/abstract=1342713.

[19] For a rejection of this idea see, *inter alia*, J.H.M. VAN ERP, EUROPEAN AND NATIONAL PROPERTY LAW: OSMOSIS OR GROWING ANTAGONISM? (2006), Vincent Sagaert, *De Verworvenheden Van Het Europese Goederenrecht*, in DE INVLOED VAN HET EUROPESE RECHT OP HET NEDERLANDSE PRIVAATRECHT, 301 (A.S. Hartkamp, C.H. Sieburgh, and L.A.D. Keus eds.,, 2007), Bram Akkermans, THE PRINCIPLE OF NUMERUS CLAUSUS IN EUROPEAN PROPERTY LAW, 475 (2008).

[20] See Case C-69/88 *H. Krantz GmbH & Co v Ontvanger der Directe Belastingen en de Staat der Nederlanden* [1990] ECR I-583, Case C-302/97 *Klaus Konle v Republik Österreich* [1999] ECJ I-3099, Joined Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 *Hans Reisch and others v Bürgermeister des Landeshauptstadt Salzburg and others* [2002] ECR I-2157, and Case C-370/05 *Criminal Proceedings against Uwe Kay Festersen* [2007] ECR I-1129.

[21] Case C-302/97 *Klaus Konle v Republik Österreich* [1999] ECJ I-3099, Joined Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 *Hans Reisch and others v Bürgermeister des Landeshauptstadt Salzburg and others* [2002] ECR I-2157, and Case C-370/05 *Criminal Proceedings against Uwe Kay Festersen* [2007] ECR I-1129.

right of servitude to secure the performance of a certain obligation. This is done through the formulation of a prohibition that forms the content of a right of servitude. Besides the right of servitude, a contract is concluded between the parties, which states that the right of servitude will not be invoked as long as one of the parties performs his obligation under the contract.[22] These types of contracts are used, for example, between petrol companies and owners of gas stations. The contract, however, and therefore also the property right indirectly, is subject to the rules of competition law, either national or European, depending on the parties involved. As a result such a contract can only be made for a short duration of time.[23] These examples show that national law can always, especially in its effects, be subject to the law of the Internal Market. The reasoning of the European Court of Justice does not concern itself with national classifications of concepts in a certain area of law, but with the effects on intra-Community trade only. Such is, after all, the *Dassonville* formula that brings all hindrances, whether actual or potential, direct or indirect, under the ambit of the free movement of goods.[24] A similar reasoning is applied in respect to the other freedoms.[25] Occasionally, even purely national affairs can still invoke a preliminary ruling from the European Court of Justice, whereas it was previously thought to be outside the scope of European Union influence.[26] In other words, in order to understand the law of a country, European Union law must be understood in such a way as to make sense of the ongoing osmosis of national and European law.[27]

National law is therefore no longer strictly national law, but rather the law in a specific country.[28] German law is therefore more the law that applies in Germany, which can either be national law made through national legislative procedure taking into account the potential effects on the internal market, national law made through the national procedure in the implementation of European legislation, or European legislation directly. The effects of this on legal education should be visible: we need courses on *New* European Private Law. The influence of European Union law on the private law should no longer be denied. However, change is not easy. Many of the current curriculum-developers were

[22] See, for more on this, Bram Akkermans, *Supra* (note 19), 195.

[23] OLG Munchen 4 September 2003, NJW-RR 2004, 164.

[24] Case 8/74 *Procureur du Roi v Dassonville* [1974] ECR 837, Para 5.

[25] See, in this respect, the Opinion of AG Geelhoed in Case C-515/99 *Reisch* [2002] ECR I-2157.

[26] See, for instance, Case 448/98 *Criminal Proceedings against Jean-Pierre Guimont* [2000] ECR I-10663, para 22-23, and Case C-515/99 *Reisch* [2002] ECR I-2157.

[27] The term osmosis is frequently used by Sjef van Erp in his work on European Private Law. See J.H.M. Van Erp, *De Osmose Van Nederlands En Europees Goederenrecht*, 10, 94 NEDERLANDS TIJDSCHRIFT VOOR BURGERLIJK RECHT, 533 (2004), J.H.M. van Erp, EUROPEAN AND NATIONAL PROPERTY LAW, *Supra* (note 20) ;and J.H.M. VAN ERP, HUIDIG EN TOEKOMSTIG EUROPEES ZEKERHEDENRECHT, PRE-ADVIES AAN DE KONINKLIJKE NOTARIËLE BEROEPSORGANISATIE, (forthcoming).

[28] J.H.M. van Erp, HUIDIG EN TOEKOMSTIG EUROPEES ZEKERHEDENRECHT, *Supra* (note 27).

trained in a nationally oriented curriculum and, in times of strong anti-European sentiment, are not always interested in the most current European developments. Additional measures might therefore be needed to allow European law school curricula to connect with the most up to date state of affairs in their legal order.

C. Cooperation as a solution to the current challenges

A course in a law school curriculum that intends to provide a complete overview of the development of European private law must combine comparative law, European Union law in its positive form, i.e. through European legislation, and negative form, i.e. through the case law of the European Court of Justice, the Draft Common Frame of Reference and its development, as well as an understanding of the political process in the European Union.[29] The latter part is especially relevant in order to create a full understanding of existing, but also future, legislation.

European Private Law is becoming increasingly complex, so much so that perhaps it has become too much for a single person to understand. Few universities will be able to gather a group of people knowledgeable enough and with allocated teaching time enough to provide a lucky group of students with a perfect course on European private law. Moreover, dealing with all aspects of the New European Private Law might require more time than is currently allocated to a single course in the curriculum. Ideally a student in a course on New European Private Law has already completed a full course on foundations of European law dealing with the EU Institutions and their relations and governance structures as well as a full course on European substantive law dealing with the four freedoms in the Internal Market at the least. After this general knowledge on European Union law the student would be ready to tackle the application of European Law to the law of the Member States: to deal with the application of European law in reality.

The subject of New European Private Law should therefore not strictly focus on the similarities, although they cannot but pay attention to the system of European Private Law that is created through positive and negative integration, but also should pay respect to the differences between the laws of the Member States and potentially how European law does or, in particular, does not solve these. The emphasis on similarity or difference is a general methodological question in European private law that all, students and teachers alike, must deal with.[30]

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[29] Moreover, it should take into account other international organisations such as the United Nations, The Council of Europe, the World Trade Organisation etc.

[30] Gerhard Dannemann, *Supra* (note 13).

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Knowledge of the New European Private Law must be acquired through a process of learning about the different areas of law it comprises, as well as, through observation of its functioning for a while. Depending on, *inter alia*, the political and methodological foundations, a certain emphasis will follow automatically. The past has shown how academics can become divided on questions of similarities or differences.[31] Such another divide must be avoided, as it would be likely to bring the debate back to the old arguments, rather than to move the scholarship forward.

Perhaps the time has come to cooperate intensively, at an international level, to develop the scholarship on New European Private Law. The networks of academics, stakeholders, in particular practitioners, and other interest groups have previously worked together to draft principles. Perhaps these same academics, practitioners and interest groups can work together on a New European Private Law Curriculum. We should increasingly try to co-teach courses, collaborate electronically and, most important of all, spend time at each other's faculties to observe and learn from each other.
For a long time academics have worked together to co-teach courses on an individual basis. Often this cooperation follows from research networks and ad-hoc research cooperation already in place. Usually, these contacts come through academic friendship and respect for each other's work. However, a forum of New European Private law could offer a more structural basis to exchange information on each other's courses and create opportunities to meet and co-teach.

Electronic communication could offer an almost perfect tool. When it is logistically or financially impossible to travel to meet in person, the Internet offers an opportunity. More and more universities build facilities to teach over the Internet. This may be with a group of students on one end and an academic at the other end, addressing the students through video, either with or without any other technical aids. However, it may also be two groups of students with two teachers collaborating over the Internet through a live video connection. It has now become possible for students and teachers alike to enter into a debate with each other on any topic, in real-time, without having to travel to meet each other.

Such collaboration would allow students from different cultures to engage in a discussion on the rise of a New European Private Law, to discuss the different application of European legislation in their country, or to debate on other topics of European Private Law. The results could be common papers, common presentations and, possible, a meeting between the students at the end of a very successful course through a student conference of colloquium. The development of electronic communication, using text, voice and video, would at least be worth a try.

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[31] See P. Legrand, *Against a European Civil Code*,, *Supra* (note 11); TOWARDS A EUROPEAN CIVIL CODE, 3rd revised and expanded edition, (A. Hartkamp et al. eds., 2004).

Another way in which electronic communication can be used is through previously recorded video. Increasingly academics are using visual aids in their presentation of the subject matter to students. This may vary from 'simple' slides summarising information or the view of the lecturer, to complicated multi-media presentations that support the communication from teacher to student. Cooperation in this area can also be very interesting.

It will be almost impossible to provide students with an overview of all the relevant actors and ideas in the area of New European Private Law. However, it is possible to introduce the students to the main schools of thought. This can be done in a classic way by making the students read contributions written by principal proponents of a certain school, but it perhaps may also be achieved through showing students a short video of the person in question explaining his or her views. It would be cooperation at a relative low cost to make a set of constantly expanding videos (in multiple languages), including subtitles in multiple languages, to show to students of New European Private Law. This could either be done as a part of teaching, or as 'reading material' on their own time. It would allow all contributors to benefit from the work of others by being able to share their work with students. Moreover, it would also allow other 'stakeholders' to participate in the education of students of New European Private Law. These could include Members of the European and national parliaments, as well as civil servants from the European Commission.[32] Such an initiative would possibly allow a more complete overview of all the various actors and their respective ideas.

Most importantly, however, we should try to spend time at each other's institutions for as long as possible. The study of a New European Private Law and the hopefully accompanying rise of a New European Private Law scholarship should offer more and easy opportunities to exchange.[33] The increasing role of the European Court of Justice should offer assistance here. As more and more the cases of the Court deal with matters of national private law, and the cases are translated into the official languages of the European Union, the case law of the European Court of Justice is increasingly becoming a rich library of information on the private law of the Member States. Moreover, the publication of the Principles of European Law offers such an opportunity, as the comparative notes present the laws of the Member States in English.
It should therefore have become easier to find out whether a particular legal system is relevant for a particular type of research. Moreover, the increasing body of available material in English allows for better preparation for a visit to another jurisdiction and to should also increase the effectiveness of a stay abroad.

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[32] See, for example, the video's posted online by MEP Diana Wallis. Diana Wallis, *On European Contract Law*, Available at :http://www.metacafe.com/watch/1699851/diana_wallis_on_european_contract_law/.

[33] This would seem to be in line with the European Commission's plans for the development of a European Research Area (ERA). See GREEN PAPER THE EUROPEAN RESEARCH AREA: NEW PERSPECTIVES COM, 161 (2007) .

D. The End of University as We Know It?[34]

Times are changing and the development of society, as well as the rise and further development of new legal scholarship, increases the need to adapt our law school curricula. It proves an excellent opportunity to re-evaluate the way in which lawyers are educated. I argue that one way forward can be found in the recognition of the reality in which European private law is continuously developing in the Internal Market of the European Union. The availability of new materials, offered on the basis of comparative and European Union law scholarship, in the form the PEL, ACQP and DCFR, including comments and notes, finally offers one way to do it. Additionally, the increasing body of case law of the European Court of Justice also offers a rich source of information, available in all languages of the EU.

I argue that we should achieve this through cooperation. Cooperation will allow a more consistent development of a new European private law scholarship in which there is room for diversity of opinions. Cooperation should avoid a unreasonably harsh battle of schools of thought on the desirability of a European Civil Code. It should stimulate debate, rather than end it. What should unite students (and that includes teachers) of New European Private Law is the awareness of the growing body of private law and the conviction that this private law should be studied from multiple angles. These angles include comparative insights, but also the recognition of the importance of European Union law and the effects this has on national law.

In his opinion article to the New York Times, Mark C. Taylor argues that change is needed if American education is to thrive in the 21st century. He suggests, *inter alia*, restructuring the curriculum into a 'web or complex adaptive network' in which there is room for multiple disciplines, and increasing collaboration among institutions. The same applies to European education. The development of a New European Private Law scholarship, and the accompanying law school curriculum may offer a way forward.

If this is the future of legal education in the area of private law, there is no longer room for the traditional –nationally oriented- law school curriculum. Law schools that offer a curriculum of this type should move towards a comparative law curriculum as quickly as they can. Law school that offer a comparative law curriculum should take the challenge to develop it into a European and comparative law curriculum. The time is right to do so. Finally, law schools that already provide a European and comparative law curriculum should take a leading role in the development of these types of curricula. The example of new European private law shows that it can be done. Moreover, these law schools should take responsibility for advancing the state of development they are in and reach out to the

[34] See, Mark C. Taylor, *End the University as we know it,* NY TIMES, (27 April 2009), Available at: http://www.nytimes.com/2009/04/27/opinion/27taylor.html

law schools that may be able to use their help. This includes opening up course material and sharing course literature with colleagues that share the same interest. Together we can create better lawyers that may actually be able to move beyond the restrictions of our national legal systems and who may actually be able to decide where the law should go next.

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