

A new approach to the study of law in Europe

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The growing socio-economic, political and legal integration that can be seen within the European Union and the European Economic Area, demands that practising lawyers no longer think from a purely national, but also from a mixed European-national perspective. More and more legal areas are affected by European standards, rules and projects: recommendations, directives, regulations, action plans etc. Also the influence of the case law developed by the European Court of Justice should not be ignored. European law is no longer an area of a rather esoteric nature, only understood by “European” lawyers who are merely interested in the functioning of the European institutions as such. The growing influence of European law in all areas (public as well as private law), has lead to an awareness that the European legal systems show more and more of an osmosis of national and European law.

The result of this development is, from an historical perspective, very intriguing. As a consequence of the reception of Roman law, the continental legal systems and the legal system of Scotland became a mixture of local law and Roman law. This was not the Roman law as the Romans developed it, but Roman law as it was understood and interpreted by the lawyers (particularly academic lawyers) living during and after the Reception. The resulting mixture lead, with regard to the law as applied in the province of Holland (the leading province in the Republic of the United Netherlands), to a legal system called “Roman-Dutch law”. This system was abolished when Dutch law became codified. Roman-Dutch law, however, survived in those countries where the Dutch had created settlements and where no codes were introduced. The most well known example is South Africa. What can be seen in today’s Europe is, in a sense, the revival of the mixture of legal systems, albeit that Rome is no longer the source of such mixture, but Brussels.

German law, Dutch law or any other national legal system within the European Union can no longer be studied without thorough knowledge and critical analysis of European law. Not only case law developed by a national supreme court will have to be examined, but also case law developed by the European Court of Justice and, not to be forgotten, the European Court on Human Rights. To understand the impact of such developments, an analysis of the mixture in various national legal systems becomes more and more important, not only from a theoretical perspective, but also – and perhaps even more – from a practical viewpoint. Because with regard to European law it is the European Court of Justice which is the highest court and national supreme courts have, to a certain degree, become “intermediate” courts. The interpretation by the Netherlands *Hoge Raad* of a question governed by European law has the same persuasive authority as the interpretation given by the German *Bundesgerichtshof*. The same is true with regard to how a national

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parliament interprets and implements European law. Ultimately, only the European Court of Justice will be the highest authority with regard to whether national measures of implementation are in conformity with the relevant European rules. Furthermore, national parliaments will more and more have to accept that in certain areas the European institutions, such as the European parliament, will play a leading role.

Another reason can be mentioned why lawyers should be more than only superficially interested in other national legal systems within the European Union. More and more often European measures are taken on the basis of comparative legal studies. A prime example is the Common Frame of Reference, which is now being discussed. The aim of this Common Frame of Reference is to formulate fundamental principles of contract law, to give definitions of the main relevant abstract legal terms and provide model rules of contract law. More information can be found on the website of the European Commission. (http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/index_en.htm) The basis for this Common Frame of Reference is the work done by, among others, the Study Group on a European Civil Code (<http://www.sgecc.net/>) and the so-called "Acquis Group" (<http://www.acquis-group.org/>).

As a result, not only is European law, in the broad sense of institutional as well as substantive public and private law, now widely studied and examined as part of the *curricula* of law faculties, but also comparative law is no longer a *corpus alienum* in such *curricula*. Although in many European law faculties comparative law and European law have been taught for some time, until one or two decades ago, at least generally speaking, these were non-mandatory topics for those who were interested in foreign (in fact frequently meaning "strange") law and who were at least interested in foreign languages. How much things have changed! European law has become a mandatory course in nearly every legal *curriculum* and comparative law is increasingly not taught as a separate course, but as an integrated part of traditionally purely national courses, such as on the law of obligations and the law of property. For some faculties this has led to a growing awareness that the starting point for teaching the law should no longer be national law, but comparative law. Only after students have been given an overview of the various alternatives that can be found in the major legal systems is national law studied in more depth. Examples of this new approach towards the study of law can be found in the European Law School programme of Maastricht University and the Hanse Law School programme in Bremen, Oldenburg and Groningen. What makes the Hanse Law School so special is that it is a collaborative programme between two German law faculties and a Dutch law faculty, focusing on the comparative study of the law of Germany and the Netherlands.

For me it is a fascinating experience to teach European and comparative property law in both the European Law School programme in Maastricht as well as the Hanse Law School programme in Bremen. In Bremen the languages in which the courses are taught are German, Dutch and English. German or Dutch are used when respectively German or Dutch law has to be explained, English is used when topics of a more general comparative nature are being discussed. This can only be done in an effective way if the students who take part in such courses fully support this approach. This is certainly my experience. The

students show a stimulating enthusiasm and sincere interest with regard to the comparative study of law.

Together with this new approach to the study of law, new and innovative ways of teaching are being introduced. An example is the electronic learning environment that has been developed. However, the Internet has more to offer. Instead of exchanging information and views through printed journals, the Internet makes it possible to do this through an electronic journal. E-journals have many advantages compared with printed journals. Articles of any length can be published quickly and inexpensively. Electronic publications can contain references to other Internet sources, such as websites giving access to case law, statutes and government publications, which gives added value to these publications. The students of the Hanse Law School have seen this opportunity and have created the Hanse Law Review, which is now being launched.

It is now the task of the present first group of editors to build up the Hanse Law Review. It is also their task to convey their enthusiasm to new generations of students in order to preserve continuity. I am convinced that they will succeed!