The Harmonization of Private and Commercial Law: "Towards a European Civil Code"

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Introduction

In February 1997, while the rotating EU-Presidency was in the hands of the Dutch, a large symposium was convened in The Hague to discuss the further harmonization of European private and commercial law. More than 200 jurists were assembled for this particular purpose, most of them academics, judges, practitioners and civil servants from EU Member States, but also representatives from the EU Parliament and Commission, as well as observers from countries currently applying for EU membership.

The conference title itself indicated clearly the direction in which the host-government of the Netherlands and other harmonization-activists want the Union to go: "Towards a European Civil Code".[1] The ultimate goal for the pro-Code group in Europe is the enactment of comprehensive legislation, binding upon all European Union Members and comprising virtually all aspects of private and commercial law.

Though the idea of drafting and implementing such a codex is not really new,[2] it might seem both unworkable and unattainable, at least in the foreseeable future.[3] Then again, as certain influential delegates emphasized in the Hague, the Code project has already gained the support of the ever-more-powerful Euro-

1 Symposium organized by the Dutch Presidency of the European Union, The Hague (Scheveningen), 27 February 1997.

2 *See* Lando, *En europæisk lovbog på formuerettens område* in Julebog 1996, Juridisk Institut (Copenhagen Business School) and *En europæisk formueret* in EU-ret & Menneskeret, December 1996.

3 *See* Wilhelmsson, *Dealing with Integration* (Uppsala 1996) s. 42: "will not be possible, at least not in this millennium".

pean Parliament,[4] and if a Civil Code were to be enacted as a Directive or Regulation, it would not even require a unanimous vote![5] For these and other reasons, even the most skeptical among the symposium participants felt compelled to take a second, more serious look.

In this article I shall comment briefly upon some of the key views which were exchanged during the Hague symposium: first as regards the possible content of a European Civil Code, then as regards the legal authority which might support this kind of harmonization, imposed from "above". Finally, I shall address the more fundamental - and controversial - question: Do we in Europe really need a private law codex at all?

1 The Content of the Proposed European Civil Code[6]

The most fervent harmonization-from-above advocates see virtually all "private and commercial law" as viable subject matter for a European Civil Code.[7] Such a comprehensive codex would include, *inter alia*, the substantive rules which regulate inter partes contractual obligations: not only the abstract rules applicable to contracts in general (everything from contract formation to set-off and prescription), but also rules governing specific contract types. Such a Code would also regulate inter partes obligations arising in delict: not only general delictual rules, but also specialized rules for specific torts. Beyond this, Code-advocates would add rules for the various "third party" issues traditionally falling within the property-law realm.[8]

As regards specific contract types, the comprehensive Code would include rules regulating financial services, construction, transport, leasing and factoring.[9] Regarding specific delictual obligations the shopping-list includes rules for traffic accidents, pollution, and unfair competition.[10] Then again, as regards (e.g.)

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4 As also emphasized by the Dutch Ministry of Justice in its invitation to the symposium: "In a resolution of [26 June] 1989 - No C 158/400 - the European Parliament requested the Council, the Commission and the Member States to start the necessary preparatory work on drawing up a common European Code of Private Law." The request was repeated in 1994.

5 Regarding the question of legal authority, *see* point 2 *infra*.

6 In the present context, the Code's content seems like an appropriate place to start. In The Hague, the first point on the agenda was (1) the legal basis for a European Civil Code; *see infra*, text with note 26. Then came (2) drafting, (3) general provisions, and (4) specific topics most needed: contracts, torts, property etc.

7 The term "civil law" comprises not only the law of obligations (contracts and torts) and property law, but also family law and the law of inheritance. These latter topics, however, are considered "least ready for harmonization efforts": *see* Hondius in *Towards a European Civil Code* (Hartkamp ed., Dordrecht 1994), Ch. 1, s. 4. (A second edition of this work was published in 1998).

8 Third party issues would include the rights of creditors, good-faith purchasers, etc. *See, e.g.*, Gomard, *Obligationsret*, 1. del (2d ed. Copenhagen 1989), Ch. 1.

9 *See* Lando, *En europæisk lovbog på formuerettens område* in Julebog (Copenhagen 1996) s. 18.

10 *Id.*

security interests in moveables, even Code advocates acknowledge that it may be easier to sketch out harmonization solutions than to realize them in practice.[11]

Rules of private international law (PIL),[12] including choice-of-law rules, might also be included in a comprehensive European Code.[13] Thus far, harmonization of the PIL rules regulating the law applicable in contractual matters (the Rome Convention) has played a key role in the harmonization of European private and commercial law, whereas less progress has been made as regards harmonization of the PIL rules relating to tort and property law.[14] Of course, the need for harmonization of PIL rules is diminished to the extent that differences among national substantive laws are eliminated: if, for example, the buyer and seller of goods reside in Member States sharing the same international sales law, a court has no "choice" to make between competing substantive laws.[15]

There are, of course, alternatives to the total codification of European private and commercial law. One might, for example, construct a smaller codex, with selected rule-sets for special areas of contract and tort. Another possibility would be to limit the application of the codex to transnational transactions. Just as special rules have been created for international sales,[16] Europe might enact a special Euro-Mortgage for use in cross-border financing of real estate acquisitions;[17] other, more zealous Code-advocates have rejected such partial harmonization proposals as insufficient, perhaps even worse than no codex at all.[18]

It would, of course, require a colossal effort to harmonize and codify as much private law as is advocated by the pro-Code group: "For, if [in English legislation] it takes 27 lines to describe the legal consequences of killing or injuring a dog worrying livestock, [a Code skeptic] shudders at the eventual size of a full Civil Code!"[19]

So in the 1980's, the so-called Lando-Commission on European Contract Law, with support from the EC Commission,[20] went to work on a step-by-step basis. Not being hampered by "governmental interference",[21] the Lando-Commission academics have already concluded work on the *Principles of Euro-*

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11 *Id*. at 19.

12 Re. Danish PIL law rules *see* Lookofsky, *International privatret på formuerettens område* (2d ed. Copenhagen 1997), Philip, *EU-IP* (2d ed. Copenhagen 1994) and Svenné Schmidt, *International formueret* (Copenhagen 1987).

13 The PIL field also comprises rules regulating the jurisdiction of courts, including the 1968 EC/EU Brussels Convention on Jurisdiction and Judgments.

14 *See* Lookofsky, *supra* note 12, Chapters 5 and 6.

15 *Id*., Chapter 4.

16 *See* Lookofsky, *Understanding the CISG in Scandinavia* (Copenhagen 1996).

17 *See* Wehrens in *Towards a European Civil Code*, Ch. 22, p. 396: "harmonization of the mortgage laws of all EU Member States ... neither practicable nor desirable".

18 *See* Hondius, *supra* note 7, Ch. 1, p. 4: "one drawback of this approach is the disintegration of domestic law through partial harmonization".

19 *See* Markesenis in *Towards a European Civil Code*, Ch. 15, p. 290 f.

20 *See* Lando, *supra* note 9, at 14 with note 8.

21 Members of the Lando-Commission are, with few exceptions, all professors of law; *see id*., p. 13.

pean Contract Law, Part I.[22] The next segment of their work - comprising contract formation, validity, interpretation, and the law of agency - should soon be complete; the Commission will then move on to principles common to the law of contracts and torts, such as assignment of claims, subrogation, set-off and prescription.[23]

The main purpose of the Lando-Commission's *Principles* is to establish a basis for a true (legislated, binding) codex,[24] but to be politically acceptable, such a "real" Code would surely end up as a completely different - and substantively inferior - kind of work.[25] As to this, I will elaborate (in points 3 and 4 below).

2 The Legal Basis of a European Civil Code

The majority of those present at the Hague symposium would surely count themselves as codification-advocates, most of them being well-acquainted with the content of the proposed Civil Code. So, once the Dutch Minister of Justice had concluded her welcoming speech, these delegates were ready for the first point on the Hague agenda: the *how-question*, i.e., the legal basis for enactment of the broad-based codex which its advocates would so much like to create.[26]

Judging by the first few speeches from the podium, the question of the Code's legal basis might be phrased in terms of "either or." The Code could be passed *either* by means of central EU legislation, i.e., by directive or regulation as authorized by the "Third Pillar" of the Maastricht (as of 1998 Amsterdam) Treaty, *or* by the formulation of a separate treaty/convention to be ratified by the individual EU Member States.[27]

By means of a directive or regulation, a European Code could be established with the participation of the EU Parliament, which has already declared itself to by an advocate of the Code.[28] Such EU legislation could then be enacted with the support of a qualified Council majority. Just as authority has been found for Council directives which have harmonized individual segments of European private law, it is assumed that Articles 100 and 100A of the Maastrich (articles 94 and 95 of the Amsterdam) Treaty provide authority for the harmonization of virtually all of private law.[29]

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22 Lando & Beale (eds.), *Principles of European Contract Law* (Dordrecht 1995), Part 1, Performance, Non-performance and Remedies.

23 *See* Lando, *supra* note 9 at 13.

24 *See* Lando in the *American Journal of Comparative Law*, vol. 40 (1992) p. 577: "The primary objective of the Principles ... is to serve as a basis for a European Code of Contracts." *Accord*: Lando, *supra* note 9 at 21.

25 *See* Bonell, *The Need and Possibilities of a Codified European Contract Law*, manuscript to Hague-symposium speech, *supra* note 1 (on file with the present author) p. 7 ff.

26 Regarding the main points on the Hague-agenda, *see* note 6 *supra.*

27 *See* Lando, *supra* note 9, and Pagh, *EU-miljøret* (Copenhagen 1996) p. 142 f.

28 *See supra*, note 4.

29 This is, at least, the conclusion of EU-Parliament advisors: *see* Drobnig, *Private Law in the European Union*, *Forum* Internationale nr. 22 (1996) s. 16. *See also* Betlem in *Towards a European Civil Code*, Ch. 19, at 338: "one of the differences between Article 100A and Arti-

Within the larger field of obligations, EU Member States have brought into effect numerous Council directives which have harmonized national laws of contract and tort: the Directives on Product Liability (1985), Contracts Negotiated Away from Business Premises (1985), Self-Employed Commercial Agents (1986), Consumer Credit (1987), Package Tours (1990) and Unreasonable Contract Terms (1993); a new and far-reaching Directive on Consumer Sales and Consumer Guarantees is currently (in 1998) being prepared (the directive was passed in 1999).

According to the preambles of these directives, the Council desires to protect consumers,[30] divergences and discrepancies between national consumer laws may distort competition, and an approximation of national rules is necessary, since such discrepancies can adversely affect the functioning of the common market.[31] In other words, rule-harmonization is seen as necessary - not just because the different national rules necessarily discriminate, but rather because rule-discrepancies can themselves result in increased economic costs.[32]

Those who would prefer to enact a Code by means of regulation[33] refer to the lessons which may be learned from previous EU private-law directives.[34] Implementation of a directive must be left to the individual Member States[35] - a clumsy and uneven procedure which leads to delays and a far less uniform harmonization of law.[36]

Other Civil Code-advocates would rather achieve their harmonization goal by the drafting and ratification of a special regional treaty, just as significant segments of private international law have been harmonized previously by supplementary agreements between EU Member States, e.g., the 1968 Brussels Convention on Jurisdiction and Judgments and the 1980 Rome Convention on the Law Applicable in Contractual Matters. Indeed, the purpose of such treaties can hardly be separated from the goals set forth in the more fundamental EC/EU treaties of Rome and Maastricht (and Amsterdam).[37]

(Quite apart from treaty-harmonization originating at the regional level, additional harmonization has been indirectly achieved through international legisla-

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cle 100 is that the latter is confined to directives ..."

30 *See, e.g.*, the Preamble of the Directive on Product Liability (1985).

31 *See id*. and the Preamble to the Directive in Respect of Contracts Negotiated Away from Business Premises (1985). *See also* the EU-Parliament declaration cited *supra* in note 4: "unification should be envisaged in branches of private law which are highly important for the development of the single market, such as contract law."

32 *Accord*: Lando, *supra* note 9, p. 11.

33 *See, e.g.*, Betlem, *supra* note 29, p. 335: "a possible European Civil Code ... should preferably - given the need for a systematic and coherent approach - be adopted in the form of a regulation."

34 *See* Betlem at *id*.: "A regulation is more truly European than a directive, which must be regarded as a second-best approach."

35 *See* Rasmussen, *EU-ret i kontekst* (Copenhagen 1995) p. 268.

36 *See* Müller-Graff in *Towards a European Civil Code*, Ch. 2, p. 23: "the experience gained with the directive-method suggests ... the adoption of *regulations* based on Article 100 A or 235 of the EEC-Treaty rather than the enactment of directives [my emphasis]."

37 *See* Lasok & Stone, *Conflict of Laws in the European Community* (1987) p. 341 with note 8.

tive efforts. Most prominent is the 1980 UN Convention on Contracts for the International Sale of Goods (CISG), ratified by most EU Member States. In the same (international) category we find the 1955 Hague Convention on the Law Applicable to International Sales of Goods[38] and the 1973 Hague Convention on the Law Applicable to Product Liability.[39])

Some of those who would introduce an EU Civil Code by treaty find only doubtful authority for the more centralized directive/regulation approach. At the same time, they see an advantage in their seemingly more conservative model: since a separate Code treaty would bind only those Member States which elect to ratify it, the harmonization of private and commercial law could proceed at two different speeds; the most fervent harmonization advocates would drive freely in the fast lane, unimpeded by any Code skeptics who might choose to stand still.

3 Why Legislate a Civil Code from "Above"?

Irrespective of whether Code-advocates support the directive/regulation or the treaty model, they all seem to agree when it comes to the most fundamental issue involved: there is, they say, a real need for a single, European set of private and commercial law rules, and these rules must be enacted as binding legislation, in a Civil Code imposed from "above."

As to the need for a single/common set of rules, Code advocates emphasize the business "risk" of foreign law, a risk which is said to keep many merchants away from foreign markets. According to this view, the differences between national laws are seen as significant trade barriers which should be removed without further delay.[40] Not willing to wait until a common European Civil law grows up slowly, from "below",[41] Code advocates want to issue a binding directive, regulation or treaty, as the case may be.[42] With the support of those advising the business world ... or without!

For, as Ole Lando sees it, "Business people who have the need [for a Civil Code] may not realize it, or they may let themselves be convinced by lawyers who claim that legal unity cannot or ought not be achieved. It is difficult to get business people to support a given legal cause when their legal advisors and governments council against."[43] Or, as another Code advocate chose to put it:

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38 The significance of which has been reduced considerably by the advent of the CISG: *see* Lookofsky, *supra* note 12, Ch. 4.1.

39 An overly formalistic rule-set which Denmark has wisely chosen *not* to ratify: *see id*., Ch. 5.3.1.

40 *See* Lando, *supra* note 24, p. 573, and Lando, *supra* note 9, p. 11.

41 *See* Lando, *supra* note 9, p. 9 ff. Lando refers to Code skeptics who would rather see common rules grow up "from below" as disciples of Savigny, the German jurist who argued against the codification-from-above arguments advanced by the jurist Thibault.

42 I.e., by way of EU legislation supported by the European Parliament or by a separate Code treaty ratified by the parliaments of individual Member States. *Id.*

43 *Id.* at 18. Translation by the present writer.

"politics is about getting people to do what they should do, even if they don't like it!"[44]

But if the need for a European Code is really as great as Code-advocates would have us believe, why do those who advise business and national governments remain unconvinced? At least part of the answer may lie in the sky-high cost of drafting of such a monumental volume and its subsequent implementation in the individual EU Member States. Imagine all the new laws, new law books, new courses for law-students, lawyers, judges, businesses, etc. Can Code advocates demonstrate that the transaction costs now associated with differing rule-sets would justify the enormous expenditures needed for a totally new set of rules?[45]

The "price" of a civil law codex is one thing, but we should consider the book's *quality* as well. The harmonization and codification of legal rules - reducing judge-made law to black-letter statutes - does not necessarily lead to improvements in the law. This may be why the more modest vision of a *Nordic* Code never attracted much of a following in our part of the world.[46] And though the arguments made now, some 50 years later, in support of the *European* vision are different,[47] the individual Scandinavian States have reason to fear that an EU codex would lead to a deterioration of national standards as we know them today.[48] It took our judges and legal theorists decades to build up the progressive, flexible and pragmatic system of today, and few of us would want to see it replaced by a wooden, more hollow set of rules.

These fears seem confirmed by the Scandinavian experience with the EU harmonization process thus far. Though the declared goal of many previous private law directives has been to increase the level of consumer protection within the Union, the fact is that Scandinavian consumers have always enjoyed a level of protection well above that now required by EU "minimum" rules. Indeed, when viewed from a Scandinavian perspective, the primary impact of the EU private-law directives has been (not increased consumer protection, but rather) increased *mechanization and complication* of prior national law. Since, for example, the EU-legislator could not accept an elastic "general clause" such as that laid down in our (uniform Scandinavian) Contracts Act, the Unfair Contract Terms Directive was equipped with a long list of specific categories of prohibited terms; later, the Danish legislator chose not to include the EU list in the Danish implementing statute, as it was feared that such a list of specific examples might lower the protection already provided by our General Clause.[49]

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44 From my notes taken during the Hague symposium, citing an intervention by one (unidentified) Code-advocate.

45 *Accord*: Bonell, *supra* note 25, p. 15: "efforts that such a project would require would be manifestly disproportionate to the results attained."

46 Fr. Vinding Kruse, *En nordisk lovbog* (Copenhagen 1948).

47 *See* Lando, *supra* note 9 (re. his "vision" of a European Code).

48 *Accord:* Bonell, *supra* note 25, at 14 (the chances for attaining the "best" Code seem slim).

49 *Accord*: Gomard, *Almindelig kontraktsret* (2d ed. Copenhagen 1996) at 177.

Similarly, though the Product Liability Directive can hardly be said to have resulted in improved protection for consumers in Denmark,[50] the Directive has had the result of complicating the state of product-liability affairs. For now, Danish lawyers have two "competing" rule-sets to contend with: both the new EU Directive and the older Danish judge-made law.[51]

(To some, the EU/Rome Convention on the Law Applicable to Contractual Obligations may look like a codification of prior Danish law, but even here EU-harmonization effort has left a distinctly "un-Danish" mark, in that Article 4(2) of the treaty presumes a contract to be most closely connected to the country where the "characteristic performer" resides. Previously, Danish commentators had rejected similar single-contact rules as too stiff and old-fashioned for the legal environment of today.[52])

In future, if private law is to be regulated effectively, from "above", the EU legislator will not be content with an assortment of minimum-directives and PIL treaties, as previously has been the case.[53] Differences among national rule-sets will be leveled out more firmly, with binding regulations derived from the "common (EU) core," with rules *homogenized* down to the lowest common denominator in a European Civil Code.[54]

4 Harmonization from "Below" and the Model-Law Route

Now, a "Code-skeptic" is *not* the same as a harmonization skeptic, an EU-skeptic, or the like. Those who would reject the proposed EU codex do not necessary deny that some Member States, perhaps even the Union itself, may derive certain benefits from EU harmonization efforts thus far. The Product Liability and Unfair Contract Directives, for example, may prove beneficial to some Union consumers, just as they may lead to certain savings for the EU business world.

Furthermore, even a Scandinavian Code-skeptic should recognize that at least some parts of our own (domestic) private and commercial system would benefit from a dose of foreign law. Comparative legal study, the foundation upon which successful harmonization efforts should be built, has already cast a spotlight on certain Scandinavian constructs which should be removed from the books.[55]

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50 *Accord*: Dahl et. al. in *Juristen* (Copenhagen 1990) at p. 147 (doubting whether the Directive extends the liability of producers beyond that established by prior judge-made Danish law).

51 *Id*. at 145 ff.

52 *See* Philip, *Dansk international privat- og procesret* (3d ed. Copenhagen 1976) s. 292. *Accord*: Juenger in 42 *Am. J. Comp. L.* 381, 385: "in reality the attribution of the closest connection to the performing party's home state more closely resembles a fiction ... capriciously conferring a choice-of-law privilege upon enterprises that engage in a consistent course of conduct to supply goods or services."

53 *Compare*, as re. EU-regulations, text *supra* with note 33-36.

54 *Accord* Bonell, *supra* note 25, at 13: "given the natural tendency of governmental experts to defend the positions of their own legal systems and the consequent need to search for compromise solutions."

55 For example: § 21, subsec. 3 of the Danish Sales Act, which entitles the buyer to cancel the contract for "any delay" must be regarded as unreasonable and outdated; a domestic buyer's

In any case, the ongoing EU harmonization process can hardly be stopped. Private law *will be* harmonized further, to some extent at least. The continuing stream of private law directives confirms that as a fact. But we can at least hope that the national rules will not be harmonized regardless of cost, regardless of need, for the sake of "harmonization" itself. Rule-uniformity should not always be the goal, especially if the result - for some Member States - would mean a deterioration of the applicable law, of the *quality* of legal rules.

> "Whenever there is a real need for unification, the sole achievement of uniformity may well compensate any possible deficiencies in content. This is the case with respect to a number of areas of international trade law, such as sales, transport, insurance ... etc. The same cannot be said of European contract law in general."[56]

Those who (for good reason) remain skeptical about the alleged merits of the grand EU-Code project would do well to consider the alternatives, the slower and "softer" methods which might exert a more positive influence on the future harmonization course. The purpose of a non-binding *model* law is not to satisfy the majority, but rather to set forth the rules which are deemed to be the *best*. And though the model law method means a slower and less comprehensive kind of harmonization, that which is achieved can be a high-quality result.[57]

Promulgated under the auspices of the United Nations, the UNCITRAL Model Law of International Commercial Arbitration is one example of a successful paradigm which a number of countries around the world have elected to use as a basis the development of new and progressive domestic legislation.[58] Another is the much-praised UNIDROIT *Principles of International Commercial Contracts* (1994).[59]

In some respects the model law method resembles harmonization by treaty.[60] But since a model law is but a model, the legislative function remains in the hands of the *national* legislator.[61] National laws are harmonized only *to the extent* that individual states *elect* to follow the paradigm, i.e., by adapting the model to the needs of the individual legal system concerned.

We find prominent examples of this voluntary approach to harmonization, *inter alia*, in both Scandinavia and in the United States. In Denmark, for example,

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right to terminate should be limited in accordance with an international buyer's right. *See* Lookofsky, *Køb: Dansk indenlandsk købsret* (Copenhagen 1996) at 106, and Lookofsky, *supra* note 16, § 6-8.

56 Bonell, *supra* note 25, at 13.

57 *Id*. at 9 and 15.

58 *See, e.g.*, the English Arbitration Act 1996, available on the Internet: *http://www.hmso.gov.uk.*

59 Which was followed - and emulated - by the *Principles of European Contract Law*, Part 1 (1995). *See* Hartkamp in *Towards a European Civil Code* (1994), Ch. 3. *See also* note 22 *supra*.

60 *See* Müller-Graff, *supra* note 36, p. 27 ff.

61 Re. the UNIDROIT-objective *see id*. at 28: "[de] préparer graduellement l'adaption *par les divers Etats* d'une législation de droit privé uniforme" (emphasis added here).

our domestic Sales Act (*Købeloven*) is the result of a legislative technique which closely resembles the model law approach, in that the original (1906) legislation was built upon a non-binding draft prepared by a commission composed of representatives from the various Scandinavian States. Denmark was therefore able to pass a bill tailor-made to Danish needs. Later, in the 1980's, when a Scandinavian majority (Norway, Sweden and Finland) decided to re-write their own sales statutes and to include a controversial new set of liability rules, Denmark chose to retain the 1906 statute, with its more traditional liability system.[62] Thus, under the Scandinavian system of legal cooperation, we see no need for total harmony, especially when that could only be attained by the relinquishment of national sovereignty and the disregard of local attitudes and needs.

Comparisons between the American and the (much more diverse) European legal landscapes are difficult,[63] but not irrelevant. Important here is the fact that the Federal government in Washington has never attempted to harmonize private law from "above", i.e., to impose a uniform set of private and commercial laws on the 50, still-very-sovereign American States.[64] Instead, those the Washington have been content to let a "common" set judge-made rules grow up from "below"[65] and to support model laws which the 50 individual States can use as paradigms for local legislation. The *Uniform Commercial Code* is the most prominent product of the American model law route, of the harmonization *without homogenization* of key private and commercial law rules.[66]

Fast food may be omnipresent, but the Americans have never wanted the kind of *Coca-Cola* legal culture which a European Codex would represent.[67] And as the American Union legislators in Washington continue to accept numerous significant differences among the private laws of the States,[68] we in Europe might do well to take heed. Since the differences in American private law have *not* impeded the development of an effective internal market, they might serve as an argument for subsidiarity in Europe as well, i.e., for self-restraint on the part of the EU-legislator in the private and commercial law field.

In the European universities, in Copenhagen and elsewhere, we academics seek to contribute to the cross-fertilization of legal systems which results from exchanges of law-students among EU Member States. Those who travel abroad on an ERASMUS or SOCRATES scholarship tend to return with a more open legal mind. This new generation of jurists will surely seek to update and improve national rules in need of change. But these same jurists, having learned that no

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62 For a critical assessment of "liability differentiation" in the new Scandinavian Sales Acts, *see* Lookofsky, *Consequential Damages in Comparative Context* (Copenhagen 1989) p. 195 ff.

63 *See* Müller-Graff, *supra* note 36 at p. 25 ff.

64 Except in those relatively few and limited cases where a strong need for uniformity is said to exist. *See* Lookofsky, *The State of the Union - in Contact and Tort*, American Journal of Comparative Law, vol. XLI (1993) 89, 92 f.

65 See id. re. the American Restatements (of Contracts, Torts, Product Liability, etc.).

66 *Id.*

67 For the phrase "Coca-Cola legal culture", I am indebted to a Hague symposium intervention by an English Code-skeptic, professor Hugh Beale.

68 *See, e.g.*, as regards product liability law, Lookofsky, *supra* note 64, at 111 f.

one legal system has all the "right" answer, may be less inclined to support a codex which would impose a single set of solutions on all EU Member States.

For the moment, the Scandinavian population may be more interested in the harmonization of cucumbers and no-deposit beer cans than in the more abstract conundrum of a European Civil Code. But our lawyers and officials should take active part in the Code debate. The Scandinavian countries have already relinquished a large portion of their private-law sovereignty, and the implementation of an EU Civil Code may be the ultimate destination of the harmonization train. How much more private-law harmonization should we aspire to, and what form should the harmonization process take?