The European Civil Code: "E Pluribus Unum"

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I. European Community Resolutions and the Codification of "Private Law"

By resolution of May 6, 1994, the European Parliament reconfirmed the resolution made on May 26, 1989,[1] concerning harmonisation of certain sectors of private law in Member States.[2] The justification for this initiative is illustrated in the preamble, which states on the one hand that the communities have already proceeded with harmonisation of certain sectors of private law, and on the other

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1. O.G. C.158, 28 June 1989, at 400. In Germany the precursor of European codification was Konrad Zweigert, *Il diritto comparato a servizio dell'unificazione giuridica europea*, 1 Nuova Riv. Dir. Comm., Dir dell'Economia, Dir. Sociale 183 (1951). In Italy the precursor was Rodolfo Sacco, *I problemi dell'unificazione del diritto in Europa*, 2 Nuova Riv. Dir. Comm., Dir dell'Economia, Dir. Sociale 49 (1953).

On the history of scientific and institutional initiatives for harmonisation, uniformisation, unification, and codification, see Michael J. Bonell, *Comparazione giuridica e unificazione del diritto*, *in* Diritto privato comparato. Istituti e problemi 4 (Guido Alpa et al. eds., 1999).

On the problems of legal communication in Europe, on the role of comparison in European private law, on the prospectives for unification, and on the training of the European lawyer, see Il diritto privato europeo: problemi e prospettive (Transactions of the Macerata International Conference, June 8-10, 1989) (L. Moccia ed., 1993); *see also* L. Moccia, *Introduction*, *in* Il Diritto privato europeo, problemi e Prospettive, *supra*; Rodolfo Sacco, *Il sistema del diritto privato europeo: premesse per un codice europeo*, *in* Il Diritto privato europeo, problemi e Prospettive, *supra*; Grande Stevens, *L'avvocato europeo*, *in* Il Diritto privato europeo, problemi e Prospettive, *supra.*

On the reconstruction of Italian law in the light of Community law, see Diritto privato europeo (Nicolo Lipari ed., 1997). On the private law aspects of Community law, see Diritto privato comunitario (Antonio Tizzano ed., 1999).

2. A3-0329/94, O.G. C 205, 25 July 1994, at 518.

that progressive harmonisation is essential for realisation of the European common market. The desired result is the development of a "European common code of private law," to be developed in various phases of progressive *rapprochement* of the prevailing rules in the systems of Member States, which would lead first to partial harmonisation in the short term, and then to a longer term more complete harmonisation. Within the scope of the resolution reference is made to organisations that already concern themselves with harmonisation of laws, such as Unidroit, Uncitral, and the Council of Europe, as well as to the works of the Commission on European Contract Law, known as the Lando Commission, which is named after the Danish professor Ole Lando who chairs it.[3] The resolution was sent to the Council of Ministers, to the Commission and to the Governments of Member States of the European Union. For its part, the Lando Commission has worked assiduously and has drafted a text of rules for contract law.[4]

Work of this kind, however, does not stop with contract law; it is also reaching the other fields of obligations (i.e., torts, restitution, unjust enrichment), and these fall under the responsibility of a committee co-ordinated by the German professor Christian von Bar.[5] In connection with this work, research is also being conducted on securities law, insurance contracts, and sales. The goals of these jurists are very ambitious and the task is quite difficult.

The expression "private law" does not receive further definition in the resolutions of the European Parliament, so that some problems of interpretation may arise in translation.

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3. Since 1982, Ole Lando has been gradually constructing the culture of European codification, dedicating himself particularly to the rules of contract. Numerous contributions include: *European Contract Law*, 31 AM. J. COMP. L. 653 (1983); *Principles of European Contract Law*, *in* LIBER MEMORIALIS FRANÇOIS LAURENT 555 (1989); *Principles of European Contract Law: An Alternative or a Precursor of European Legislation?*, 40 AM. J. COMP. L. 573 (1992) (this article is also published at 56 RABLESZ 261 (1992)); *European Contract Law*, *in* IL DIRITTO PRIVATO EUROPEO: PROBLEMI E PROSPETTIVE, *supra* note 1, at 117; *The Harmonization of European Contract Law through a Restatement of Principles* (Oxford 1997) (conference held at the Institute of European and Comparative Law organised by Basil Markesinis).

4. *See* TOWARDS A EUROPEAN CIVIL CODE (Arthur Hartkamp et al. eds., 1994) (volume one notes in a general overview the introduction by Hondius at 1; the discussion of various drafting techniques for rules by Mueller-Graff, at 19; a description of the contents of the rules collected in the first edition of the contracts code by Hartkamp, at 37; the foundation on the tradition of the *ius commune* by Zimmermann, at 65 and by Bollen and de Groot, at 97; and essays on specific themes in the law of contracts and guarantees.); OLE LANDO & HUGH BEALE, PRINCIPLES OF EUROPEAN CONTRACT LAW (1995) (containing commentary on the rules of the "code" drafted by Beale, Drobnig, Goode, Lando, Tallon).

5. CHRISTIAN VON BAR, THE COMMON EUROPEAN LAW OF TORTS (1998). von Bar has also edited DELIKTSRECHT IN EUROPA (Christian von Bar ed., 1993).

(i) As there is no definition of "private law" available in the texts creating the European Communities, it is necessary to interpret the expression by taking account of the meaning or meanings that have been given to this expression in the common parlance (the *koiné*) of the legal culture of Member States. In continental Europe private law may be considered a sufficiently uniform notion. In Italian Law, as well as in French Law, Spanish Law, Portuguese Law, German Law, or Austrian Law, private law signifies law governing relations which exist on an abstract basis between private persons or between public and private entities. Thus one is referring to rules of ordinary law, or to formulae or techniques governed by civil codes and traditionally ascribed to this subject. It is more difficult to convey a clear notion of private law in the jurisprudence of the common law, where the private/public division is not an easy line to draw and does not correspond to the line drawn on the Continent.

(ii) We must also note that in all the continental countries mentioned above, the traditional distinction between private law and public law is in a state of crisis. For some time there has been a trend in these systems towards "constitutionalisation" of private law, that is to say the direct or indirect application of rules contained in the respective constitutions to relationships between private persons. In France this process has progressed rather slower than elsewhere on the Continent but it too is underway.

(iii) Beyond these definitions, the expression private law has an academic content associated with University teaching and a formal content that includes two branches of law, namely civil law and commercial law.

(iv) From the point of view of the sources of law, private law consists then of rules contained in the constitutions, various codes and particular statutes. The legal system of the Member States also uses a variety of sources that include regulations, administrative orders of independent authorities, and so forth.

If one wished to simplify the picture, and thus simplify the tasks of the lawyers involved in the harmonisation process in Europe, one might simply refer to the rules contained in the Civil Codes and Codes of Commerce of European Member States. At this point, two further refinements emerge.

(i) The model codes in force in continental Europe are essentially two. These are the French Civil Code, introduced by Napoleon in 1804, and the German Civil Code, approved in 1896 and brought into force in 1900. To these one can add the commercial code models, which successively appeared throughout the nineteenth

century, and were incorporated in the twentieth century into the Italian Civil Code of 1942 and the Dutch Civil Code, the publication of which first began (in several volumes) in 1980.

(ii) In the English common law and Irish common law there are no codes in the continental law sense, but instead statutes as well as case law. In various States, however, there are situations which are still more complex, such as in the Scandinavian countries. Taking account of these divergences, the approach of the Commission for the project of a European code has been cautious. The division between the rules of civil law and rules of commercial law has not been followed. Using a flexible and generic understanding of "private law," it is intended that the rules developed by means of harmonisation may apply to either civil law or commercial law.

No restrictions have been imposed on the method of drafting. The harmonised rules may be considered a sort of "restatement" of the rules applied in Member States, or they may constitute the fruit of the unification of previously existing laws, with certain adaptations and simplifications required in the interest of creating a genuine codification.

One must add that for certain sectors of private law unitary models of reference already exist. Even if developed for difference purposes, the principles of international commercial contracts developed by the International Institute for the Unification of Law (Unidroit) constitutes a "restatement" of contract laws consisting of general and balanced rules.[6] The Lando Commission on European

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6. *See generally* MICHAEL J. BONELL, AN INTERNATIONAL RESTATEMENT OF CONTRACT LAW (1994); Michael J. Bonell, *The Unidroit Principles in Practice: The Experience of the First Two Years*, 2 UNIFORM L. REV. 34 (1997); Michael J. Bonell, *The Unidroit Principles: What Next?*, 3 UNIFORM L. REV. 275 (1998).

On the discussion of the "Unidroit principles" in Italy, see the transactions of the conference organised at the Unidroit premises in Rome by J. Bonell and F. Bonelli in 1995; amongst the various contributions, see the essays by Di Majo, Ferrari, and Alpa in 1 CONTRATTO E IMPRESA/EUROPA 287 (1996).

For the construction of lines of development of contract law, an understanding of the evolution of the principles elaborated by Unidroit, the effect of European Directives and the principles of the Lando Commission, see GUIDO ALPA, NUOVE FRONTIERE DEL DIRITTO CONTRATTUALE (1998); HEIN KÖTZ & AXEL FLESSNER, 1 EUROPEAN CONTRACT LAW (Tony Weir trans., 1997); T.B.M. VRANKEN, FUNDAMENTALS OF EUROPEAN CIVIL LAW (1997). For a comparison of models of judgment, see BASIL S. MARKESINIS, W. LORENZ, & GERHARD DANNEMANN, THE LAW OF CONTRACTS AND RESTITUTION: A COMPARATIVE INTRODUCTION (1997).

Italian jurisprudence has considered these initiatives with great attention. *See* Giuseppe Gandolfi, *Pour un code européen des contrats*, REV. TRIM. DR. CIV. 707 (1992); P. Rescigno, *Per un "Restatement" europeo in materia di contratti*, *in* IL DIRITTO PRIVATO EUROPEO: PROBLEMI E PROSPETTIVE, *supra* note 1, at 135; MENGONI, L'EUROPA DEI CODICI O UN CODICE PER L'EUROPA? (1993) (lecture given at the Centro di Studi and research in comparative and foreign law directed by J. Bonell).

contract law has referred to the Unidroit text in order to develop its own contract law proposal. There are also other initiatives in progress, such as the identification of a "common core" in contracts, undertaken by academics of the University of Trent, Italy, and the drafting of common principles in the French and German Law of Obligations on the initiative of the Sorbonne and University of Louvain-la-Neuve. There is in addition a proposal to draft a European Code of consumer law.

The history of the initiatives on behalf of unification, uniformity and harmonisation of the law covers more than a century and takes many diverse forms.[7] For instance, the numerous directives that the European Community has issued in consumer law relating to unfair clauses, door-to-door sales, distance selling, time-sharing, etc., already constitute a form of codification of private European law in this particular sector.[8]

What I should like to discuss, on the one hand, are the purposes of harmonisation (or unification) and, on the other hand, the doubts that have arisen in the discussion of this initiative.

II. THE PURPOSES AND ADVANTAGES OF A EUROPEAN CIVIL CODE

Alongside of the "economic space,"[9] the European Community is now seeking to create a unitary legal space. The EEC's sovereignty is limited by subject matter. The European Civil Code therefore cannot extend to subjects outside the powers of its Charter. Areas such as family law, succession and real property law are off limits. However, the Law of Obligations is included within the jurisdiction of the Community, including contracts and torts, commercial dealing, restitution and remedies. Obviously, matters arising from commerce, corporations, construction contracts, etc., are also included.

Article 100, and later Article 100A of the EEC Treaty attribute to the Council of Ministers the power to establish directives intended to bring together the "legislative, regulatory and administrative provisions of Member States which have direct consequences on the implementation and operation of the Common Market." The justification for a European civil code initiative lies in these provisions, and the initiative must be compatible with the so-called "principle of subsidiarity," which means any effort to avoid

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7. *See* Bonell; Monaco, *I risultati dell'"Unidroit" nella codificazione del diritto uniforme*, *in* IL DIRITTO PRIVATO EUROPEO: PROBLEMI E PROSPETTIVE, *supra* note 1, at 35.

8. The directives and the relative rules for their implementation are gathered in CODICE DEL CONSUMO E DEL RISPARMIO (Guido Alpa ed., 1999).

9. *See* S.M. CARBONE, LO SPAZIO GIUDIZIARIO EUROPEO (1997).

regulation. The EEC may choose between the instrument of regulation or the use of directives, or a mere recommendation in order to work toward a European Common Code.[10] But why breach the barriers of the national systems on these subjects? The lowering of national barriers is a necessary part in achieving the single market. In other words, the diverse treatment of legal relations in private law in different countries has a considerable economic cost. It presents an obstacle or a complication that obstructs the implementation of the single market. A European Civil Code would enhance the free exchange of goods, services, capital and labour within the single market. There is a strict correlation between open and free economic activity and the juridical form of civil law. In this light the initiatives of a European Civil Code encourage the market without dictating that legal rules by their nature must "mimic" economic rules. This follows the economic legal analysis as developed in America by Richard Posner.[11] In his sophisticated analysis concerning the European law of contracts, Jürgen Basedow has underlined how rules in conflict with one another, in various countries of the European Union, can develop as a real market hindrance, while uniform private law rules emerge as conditions precedent for the implementation of the single market. Thus, a European civil code would indeed constitute a "building block" of the single market.

An important objective of a European code is the simplification of the dispersed legal rules applicable to economic relations, which are found in various codes or national laws. Uniform rules would help to prevent or simplify disputes, to ensure harmonious application of the rules to disputes that have arisen, and to eliminate conflict between national systems. It may also help to prevent the dominance of one system over the other and the need of private individuals to choose the most convenient national law.

III. CRITICISM OF THE INITIATIVE

The initiative to develop a European Civil Code has created much enthusiasm, but also many doubts. An objective examination of these doubts and criticisms must take into account their origin, their reasoning, and their ambition.

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10. Ulrich Drobnig, *Un droit commun des contrats pour le marché commun*, REV. INT. DR. COMP. 26 (1998).

11. For a survey of the views and objectives of Coase, Posner, Calabrese and other leaders of the hermeneutic school, see ANALISI ECONOMICA DEL DIRITTO PRIVATO (Guido Alpa et al. eds., 1998).

First of all there is the "fear of the unknown."[12] Lawyers typically are affected by this fear, because of their desire to retain familiar notions, well-worn texts and their own method of reasoning. The abandonment of time-tested rules and predictable outcomes removes an important landmark for jurists who fear the unknown. This attitude, however, can be easily overcome if one understands that to know and confront a matter exorcises the phantom of the unknown. All those who dedicate their time to comparative law, and those who are interested in understanding what happens in other countries far and near, share the idea today that it is more important to understand what unites us rather than what divides us. There are many research studies organised for the purpose of constructing an ideal bridge ("bridging the continents" as professor Basil Markesinis defined it[13]) between different legal experiences, in order to identify the convergence between systems and to compare common law and civil law in a constructive manner.

The dream of "bridging the continents" is ripe for realisation in Europe, owing to the making of a common European legal culture whose existence, however, is denied by some scholars[14] even in the wide sense of the German *Rechtswissenschaft*.[15] Today the books, essays, and encyclopaedias of European jurists transcend national frontiers, and increasingly contain references to the law and decisions of other countries. This comparative approach allows us to have a better understanding of national law and to receive suggestions and models from other experiences. Without doubt the circulation of models in codes, laws, and principles, which cross over political and cultural boundaries is a phenomenon on the increase.

In the meantime, common legal values have consolidated in Western Europe.[16] This is true without considering the Roman Law tradition or the Medieval Law (so called *ius commune* or common law) which are quite different from the "European Ius Commune" of today.[17] In all countries of the European Union there exist

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12. Pierre Legrand, *Sens et non-sens d'un code civil européen*, REV. INT. DR. COMP. 779 (1996). For a perceptive criticism of the theories of Legrand, see Vincenzo Zeno-Zencovich, *Il "codice civile europeo," le tradizioni giuridiche nazionali e il neo-positivismo*, 5 FORO IT. 60 (1998).

13. *See* THE GRADUAL CONVERGENCE: FOREIGN IDEALS, FOREIGN INFLUENCES AND ENGLISH LAW ON THE EVE OF THE 21ST CENTURY (Basil S. Markesinis ed., 1994); FOREIGN LAW AND COMPARATIVE METHODOLOGY (Basil S. Markesinis ed., 1997).

14. Schulze, *Le droit privé commun européen*, REV. INT. DR. COMP. 31 (1995).

15. Legrand, *supra* note 12, at 785.

16. *See* I VALORI COMUNI DELL'OCCIDENTE (1970); Fernando Hinestrosa, *Des principes généraux du droit aux principes généraux des contrats*, 3 UNIFORM L. REV. 501 (1998).

17. *See* Schulze, *supra* note 14, at 10.

fundamental rights of an identical nature. In fact, the constitutional law of the European Union has materialised from the principles accepted in the written and unwritten constitutions of Member States. Moreover, the European Convention of Human Rights has further been ratified by all Member States.

Criticisms that codification is taking an excessively long time,[18] or that a codification related only to economic relationships would obscure the human face of the law or would sacrifice its "narrative function"[19] are less troubling than other concerns.

The authority under which the proposed European Code has been commissioned is somewhat doubtful.[20] In this case one is dealing with authority understood in a moral sense, rather than in a legal or institutional sense. The scope of the powers conferred on the community by the treaty do not prevent, but rather favour, the creation of a unified legal space. A code of this kind may also appear to lack systematic order. It is true that the code is being born section by section. But harmonisation may well proceed by degrees. Functional and practical demands prevail over those of order and efficiency.

More worthy of consideration are criticisms of a different nature, though even these are in my view surmountable. They may be summarised in the following way:

(i) The code will disregard the structural differences in theory and practice between common law and civil law;

(ii) It will eliminate original national characteristics and devalue legal pluralism;

(iii) Techniques of harmonisation other than the drafting of a unified Civil Code are available and are more appropriate for use.

As for the first criticism—the structural differences between the common law and the civil law—the opinion of professor Alan Watson must certainly be taken into consideration. "The legal tradition," he said, "has a considerable impact on the shaping of the law, and the individual sources of law have different effects on the growth of the law."[21] The formation of a legal system on the basis of legislative sources rather than on the basis of judicial sources is one thing. But

18. Basil S. Markesinis, *Why a Code Is Not the Best Way to Advance the Cause of European Legal Unity*, 5 EUR. REV. OF PRIVATE L. 519 (1997).

19. *See* JAYME, COURS GENERAL DE DROIT INTERNATIONAL PRIVE (1995); A. Zaccaria, *Il diritto privato europeo nell'epoca del postmoderno*, 1 RIV. DIR. CIV. 367 (1997).

20. Legrand, *supra* note 12, at 798, 803.

21. Watson, *Roman Law and English Law: Two Patterns of Legal Development*, *in* IL DIRITTO PRIVATO EUROPEO: PROBLEMI E PROSPETTIVE, *supra* note 1, at 10.

one hardly needs to be reminded that in English Law and Irish Law not all creatively comes from the case law. The province of statute law in those countries has become ever wider. The collections of English law edited by Blackwells are organised by subject matter, and the copious legislative rules dedicated to the area of contract and commercial law are contained in various volumes. Also, membership by the United Kingdom and Ireland in the European Union requires application of all community regulations and directives, which obviously take the form of written law. Furthermore, the attitude of many common law lawyers toward codification as a technique of consolidating legal rules is changing. In his conclusion on future developments of commercial law in the United Kingdom, one of the most prestigious scholars in this field, Professor Roy Goode, looks forward to the arrival of an internal codification of the rules in force relating to economic transactions.[22]

At the same time, in European countries where there are civil codes, it would be naive to pretend that there has been no case law which supplements, corrects, or simply brings the written text to life. The role of ascertaining facts is relevant in all legal systems. Reasoning by induction (as in common law systems) or reasoning by deduction (as in civil law systems) is apparently diverse in its process, but similar in substance. The classification of rules is uncertain in either system where case law is concerned. The identification of protected interests in terms of subjective rights is now common to both systems. Contractual texts are now evermore extensive; many of them are drawn from the experience of common law countries and thus take account of new types of contracts, methods of formation of contracts, techniques of notification, and transfers of money and title. This is so true that in a new treatise on Italian private law, edited by professor Rodolfo Sacco, there appears a volume on written sources, together with another volume on "non-written" sources of law, such as custom, case law, interpretation, commercial practices, and so on.[23]

As for the second criticism—the erosion of natural differences and the value of diversity—this loss is not so important. Certainly, the rules contained in individual codes will no longer be applied individually, but they will continue to survive in the historical culture of the individual countries. It is of course true that the legal system is one of the fundamental characteristics of a country, but it is also true

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22. COMMERCIAL LAW IN THE NEXT MILLENIUM 100 (1998). On the comparison between the technique of restatement and codification, see *International Restatement of Contract and English Law*, 3 UNIFORM L. REV. 231 (1998).

23. LE FONTI NON SCRITTE (1999).

that one can easily renounce it and that its existence and importance is obvious only to jurists. Realistically speaking it is not considered an identifying characteristic by the ordinary citizen.

The appeal to history and the codification movement (or in any case to legal organisations passed down by tradition) must not be undervalued, but neither must it be overvalued. It is overvalued when a tradition emerges only to achieve finality or to prevent finality of a purely technical nature. Now, it is known how the Medieval Ius Commune developed in the context of a common legal culture in Europe[24] and that this formed the tree from which grew, like so many branches, the national laws of both the continental countries and the Island areas (England, Scotland, and more recently Eire). In the medieval period important changes took place—so important as to be defined in terms of being revolutionary.[25]

Yet the legal history of Western European Countries is a fragmented one, which shows signs of progress (such as codification) but less progressive signs as well (such as the development of nineteenth-century dogma). Strange divergences have occurred, for example the greater affinity between Roman contractual law and common law rather than the Napoleonic or Germanic models; incredible coincidences have taken place, such as the translation into English of a code of Napoleonic origin that became the Code of Quebec or the translation into English of the former Italian Civil Code that became the Civil Code of Malta; and unexpected influences have been felt, such as those of canon law on English equity. The evolution of these models is not as monolithic and uniform as the critics of the Roman/French tradition would want to represent it. One only has to think of the different application of the Napoleonic Code in France and in Belgium, where the same written rules produce notable divergences in doctrine and case law. Differences are also observable in the common law family, not only between English and United States common law, but also between English common law and that in Ireland or in other common law countries politically connected with the United Kingdom. History provides us with a formidable reservoir of facts, experiences, techniques, and models that can be used to lead us to unification instead of insisting upon our differences.

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24. *See* Santini, *L'Europa come spazio giuridico unitarien: un armonia nel rispetto delle dissonanze*, *in* 1 CONTRATTO E IMPRESA/EUROPA 43 (1996). *But see* GROSSI, L'ORDINE GIURIDICO MEDIEVALE (1997).

25. LAW AND REVOLUTION. THE FORMATION OF THE WESTERN LEGAL TRADITION (1983).

On the continent, new codifications have taken place or are in the course of implementation, as in Holland, not to mention the great modifications occurring in all countries as a result of implementation of community directives. One should also consider that European Community Law is showing an expansive force. It now tends to influence the general common rules which are not affected by directives.[26]

In any event, it is only a question of the level at which one wants to place the codified rules. One is really talking of rules of a general nature, which leave the Member States free to introduce rules of a particular type applicable to individual regions. Furthermore, the law of individual nations may be saved for sectors that do not concern economic relations.

As for the third criticism that other techniques of harmonisation techniques are more appropriate, obviously the argument is open. We could continue to introduce directives scattered over sectors, but already this type of European Community law-making creates difficulties of coordination of the laws in terms of coherence, simplicity and applicability. We could turn to conventions or treaties but this would not advance us very far towards the desired solution. We could also think of a restatement or a collage of general principles,[27] but the rules of the Lando Commission, even if not very different from this proposal, are the fruit of a more creative process.[28]

These alternatives have been fully considered by the Lando Commission, and now are taken up by the von Bar Commission which is proceeding with the work on the remaining part of the Law of Obligations. In any case these options are not new: they had already been assessed immediately after the Second World War by professor Rodolfo Sacco, who announced that the choice did not involve simply the solution of technical problems, but presented questions of a political nature.[29]

Another proposal seems less worthwhile to me. Instead of a European Code, one might draft common rules of uniform international laws. However, this would be an intermediate provisional solution, and certainly not a definitive one. It would give rise to the application of common choice of rules to be applied.

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26. *See* Alpi & Dassio, *Les Contrats des consommateurs et les modifications du code civil italien*, REV. INT. DR. COMP. 629 (1997).

27. Ole Lando, *European Contract Law*, *in* IL DIRITTO PRIVATO EUROPEO: PROBLEMI E PROSPETTIVE, *supra* note 1, at 218.

28. Zeno-Zencovich, *supra* note 12, at 67.

29. Sacco, *supra* note 1, at 77.

IV. PROBLEMS OF CODIFICATION

Before turning briefly to the advantages of European codification, we should reflect further on some additional problems concerning the initiative.

The first problem is language.[30] The European Code must be drafted in all the languages of the European Union States. The rules already established for contract in general have been written in English. As is known, English is now the *lingua franca* (a language without borders) of commercial traffic. Together with French, English is one of the most practised languages in the European Community government offices. English is destined to prevail. This is not so much due to the power and dominance of England, but is above all due to the expansion of the economic and political power of the United States, coupled with the inherent practicality and simplicity of English grammar. English is the language of this code in progress, but a translation into the language of Member States will be inevitable.

The problem of language suggests that it is fundamental to choose written rules rather than those derived from case law. The choice of codification is no snub to the common law system. Many common law jurists and writers are now convinced that codification presents considerable advantages, such as simplification, certainty, and predictability of the rules. We must remember that "the citizen of a European State has not the same easy access to the laws of his sister states."[31] Very often he or she cannot read them in the original and may not fully understand them.

And then there is the structure. A code of this aim and type cannot be conceived like the old codes of the last century. It will be comprised of rules intended for individual sectors. It will not be complete, but will concern only economic relationships. It will contain broad rules, rather than rules applying only to narrow circumstances. A European Code will contain rules situated in a dynamic reality, not a static reality. The code will thus be tested through its application, and modified where gaps are found.

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30. Solution discussed by JAYME, *supra* note 19; Schulze, *supra* note 14; Zaccaria, *supra* note 19.

31. *See* Palmisciano & Christoffersen, *Aspects linguistiques de la communication juridique en Europe: pratique et problèmes des "juristes-reviseurs" de la Commission des Communautées européennes*, *in* IL DIRITTO PRIVATO EUROPEO: PROBLEMI E PROSPETTIVE, *supra* note 1, at 69.

A comparative approach using sophisticated instruments with the right perspective is necessary for this purpose. "The task of science is . . . to exorcise the opposite absurd positions."[32]

There will remain questions which are not simple to resolve. For example, there remains the question of the identification of mandatory rules, with respect to the individual systems from which the common rules derive, the constitutionalisation of private law rules, the meaning of blanket rules (in German, *Generalklauseln*) such as "good faith," "public policy," "reasonable man" and so on.[33]

We could think about the unification of remedies, since the law may not just be considered from the point of view of substance but also from the point of view of procedure. We could even consider the unification of systems of administration of justice.

V. CONCLUSION

Beyond the many advantages already shown, it is worth saying that unitary codification reinforces economic unity and is proactive for political unity. If it is true that the legal component—that is, the entire organisation of law in a community—constitutes an essential characteristic of that community, the drafting of a unitary code in a European dimension will become one of the aggregate factors in cementing that same European Community, and a factor in defining the collective European identity.

The European lawyer will no longer have to search through the dusty commentaries and case reports of other jurisdictions, encountering linguistic, conceptual and practical problems. There are advantages for the judges, who, in the administration of civil justice, will not have to resort to deciphering the formulae of foreign law.

None of this will bring about the levelling of values or the standardisation of our work. The panorama will be varied. Differences will be maintained, and uniformity consolidated. The motto of Europe, "E pluribus plures," for the Civil Code could be converted into the American "E pluribus unum."

The countries, regions, cities and villages will keep their splendid and marvelous traditions—an irrepressible aspect—and they will keep their individual beauty and their diversity. The unity of private law will not make Rome more similar to Paris or to London, the Italian language more like Swedish or German, or Italian art like Flemish art. But to paraphrase a famous saying of Voltaire: while

32. Lando, *supra* note 27, at 118.
33. Sacco, *supra* note 1, at 98.

travelling, we shall no longer be constrained to change law every time we change horses (or aircraft). Each of us will keep our own distinctive characteristics and will not have to renounce our own historic inheritance, which, as Hans Gadamer reminds us,[34] constitutes the fundamental heritage of Europe. Each one of us, though, by studying, interpreting, and applying the unified Civil Code will be and feel more European.

34. Rescigno, *supra* note 6, at 142.