E pluribus unum? Some remarks on the future of "regional" legal systems of private law in the European Union from a historical perspective

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The increasing integration of Member States into the European Union has resulted in a system of government that is often referred to as "multi-level governance". In such a system, some competences are exercised at a central level, but substantial autonomous powers remain at a regional or local level. As a corollary, a "multi-level legal system" has developed as well, also in the field of private law. Consequently, the previously national systems of private law have become "regional" systems. Historically, the structure of "multi-level governance" was common for many centuries. However, since the seventeenth century, it was increasingly seen as an anomaly. In the modern concept of a state that has been dominant for the last two centuries, centralisation and unification are paramount objectives. With the rise of the modern concept of a state, the view on legal diversity changed as well. Legal unity became the predominant ideal, which was eventually realised in several European states by means of the introduction of a uniform civil code in the nineteenth century. This historical development raises the question of what the future of the former national legal systems of the Member States of the European Union will be. There are three possible scenarios: further regionalisation of private law by strengthening the legal systems of regions of the national states, retaining the present multi-level legal system in which European legislation and national law will coexist, or replacement of the national legal systems by a uniform European Civil code. It is the purpose of this paper to describe the debate on legal unity prior to the introduction of the civil codes in the nineteenth century and use it to shed some light on the question which scenario will be most likely.

I. Regional legal systems in the European Union: an introduction

A region is a territory that is part of a larger state, but which at the same time enjoys a certain independent existence as a governmental entity. The scope of this autonomy can be different per region, sometimes even within the same state.[1] In some instances,

[1] In the documents for the thirteenth Conference of European ministers responsible for local and regional government, held in Helsinki (Finland) organised by the Council of Europe, six types of regions are described. See MCL-13 (2002) 4.

the competence to enact legislation in the field of private law is part of this autonomy, which can result in the existence of a regional legal system. In this sense, most European states do not have regional systems of private law. France is, arguably, the most obvious example, since it took the lead in 1804 by introducing the uniform Code civil.[2] In the Netherlands and Germany, too, the national legislator has the exclusive competence in the field of private law since the introduction of a civil code in respectively 1809 and 1900.[3] In these states, legislation in the field of private law is also virtually uniform.

This model of a state in which there is legal unity has become dominant in Europe, but there are of course exceptions. Spain has several autonomous regions, such as Catalonia, Galicia and Aragon, each with a private law system that diverges in many respects from the law of the other Spanish regions.[4] Since the 1950s, these rules have been laid down in so-called compilaciones de derecho civil foral. The United Kingdom is another exception. Since the Act of Union of 1707, England and Scotland have been joined as one state with a shared Parliament. However, in this Act, it was expressly determined that both nations would retain their own legal system.[5] As a result, English law, which is the famous common law, and Scots law have developed separately.

The increasing integration of European states into the European Union has put an end to this relatively simple and transparent structure of mostly uniform national legal systems. Ever more legislation in the field of private law is enacted in Brussels. Since 1985, European directives have been issued on consumer credit, distant agreements, door-to-door selling and many other topics.[6] Obviously, the Union is competent in the field of private law the moment it concerns issues relevant to ensuring the proper functioning of the common market.[7] As becomes clear from the examples mentioned above, this includes the protection of consumers. At the same time, however, the Member States

2 Since 1918, admittedly, France decided to temporarily recognise the existence of regional private law in Alsace-Lorraine. This region was conquered by France in the seventeenth century, but German culture remained strong and was even reinforced as a result of the fact that it was part of the German Empire between 1871 and 1918. J. Ghestin & G. Goubeaux, Traité de droit civil (Paris 1990), p. 266-268. E. Coutant, L'Alsace et la Moselle. Terrains d'expérimentation de la réforme du droit civil et commercial français (1918-1975) (Bordeaux (thèse) 2018), p. 13-47.

3 In 1809, King Louis Napoleon (1778-1846), brother of the Emperor, introduced the Wetboek Napoleon ingerigt voor het Koningrijk Holland (WNH). In 1900, Germany introduced the Bürgerliche Gesetzbuch (BGB).

4 E. Merino-Blanco, The Spanish legal system (London 1996), p. 21-22 and 47-51. I.C. Ibán, Einführung in das spanische Recht (Baden-Baden 1995), 166-168. Articles 13-16 Código civil (C. Sempere Rodriguez (ed.)).

5 P.A.J. van den Berg, "Lawyers as political entrepreneurs? A historical perspective on the contribution of lawyers to legal integration in Europe" in: A. Jettinghof & H. Schepel (eds.), In lawyers' circles. Lawyers and European legal integration (The Hague 2004), p. 163-190 (172-174).

6 J.M. Smits, "Toward a multilayered contract law for Europe" in: S. Grundmann & J. Stuyck (eds.), An academic green paper on European contract law (The Hague/London/New York 2002), p. 387-398 (388-389). R. Zimmermann, "Codification: the civilian experience reconsidered on the eve of a Common European Sales Law" in: W.-Y. Wang (ed.), Codification in international perspective: selected papers from the 2nd IACL Thematic Conference (Cham, Switzerland 2014), p. 11-43 (25-27).

7 S. Weatherill, "The Commission's options for developing EC consumer protection and contract law: assessing the constitutional basis", European Business Law Review (2002), p. 497-515.

retain a general competence in the field of private law. Consequently, a layered structure with regard to the process of law-making has come into existence. This is in accordance with the governmental structure of the European Union, which is sometimes referred to as a structure of "multi-level governance". In the same vein, the European system of law-making has already been called a "multi-level legal system".[8]

It can be concluded, therefore, that the Member States still have substantial competences when it concerns private law, but that they also have to deal with a higher authority in that field. The problems this causes for the domestic legal orders of the Member States are already all too familiar. It has become abundantly clear that it is not always easy to ensure that the concepts used in European legislation fit the national legal systems of private law.[9] A more important consequence of the growing supranational competence of the European Union is that the domestic legal systems are in the process of becoming "regional" systems of law. This raises the question that will be central to this paper: what will be the future of these "regional" legal systems of private law?

There are at least three possible scenarios. The first scenario is that further steps in the direction of the "regionalisation" of law will be taken. This would be in line with the concept of a "Europe of the regions", an idea that has been embraced by the European Union on several occasions. A consequence of this option would be that the position of, for example, Catalan law or the regional legal system of Alsace-Lorraine would be strengthened. Under the second scenario, the present situation would remain largely unchanged. This would imply that the national legal systems would continue to exist as they are, albeit as "regional" systems, next to a probably expanding set of European rules on private law. A third possibility is that a uniform codification of European private law will be introduced, replacing the present national and regional legal systems.

Which of these scenarios will become reality depends largely on the development of the political structure of the European Union. It will be determined by the measure of uniformity and governmental centralism that will be deemed necessary for a viable Union. The debate on this issue has triggered a discussion of the possibilities and drawbacks of legal unity. Is law universal by nature and is harmonisation therefore a viable option, at least within the borders of the European Union? Or is the continued existence of regional law necessary in view of the specific circumstances of the various regions of the Union?

These questions are hardly new. In the eighteenth and nineteenth centuries, the period in which codifications were introduced in many European states, these two views on the nature of law also dominated the debate on the appropriate political structure for the Western European states. It is the purpose of this paper to describe this debate in an effort to better understand the future developments with regard to the legal diversity in the field of private law as it exists at the moment in the European Union.

8 S. Grundmann, "The optional European Code on the basis of the Acquis Communautaire – Starting point and trends", European Law Journal 10 (2004), p. 698-711 (709).

9 C. von Bar, "From principles to codification: Prospects for European Private Law", Columbia Journal of European Law 8 (2002), p. 379-388 (385).

II. The Ancien Régime and the decline of regional Private law

1. The politics of centralisation

During the Ancien Régime, the coexistence of different systems of regional private law within the same state was quite common. This was a corollary of the fact that in that period, most European states had a governmental structure that today would be referred to as "multi-level governance". This also implied a layered structure of law-making in the field of private law, which meant that the competence to create rules was exercised at various levels.

In France, for example, most rules of a private law nature originated in regions such as Brittany, Normandy and Provence. In most cases, the core of these rules consisted of legal customs, which after all were the dominant sources of law until the introduction of the codification.[10] The King certainly had the competence to issue national ordonnances, but this competence was limited. With respect to private law, he basically could only touch matters of procedure. As to other issues, the King was not allowed to intrude on regional and local rules. In addition, the ordonnances did not always apply fully in all regions. Their validity in a region was dependent on their registration by the highest provincial court, the parlement. These courts could use this so-called droit d'enregistrement to alter provisions or even cross them out. This situation was constitutionally entrenched and resulted in a coexistence of national, regional, and local law.

The Dutch Republic, too, had a layered structure of law-making, but in a way that was different from most other countries. After all, the Republic was exceptional due to its constitutional arrangement. It was a loose confederation, composed of sovereign provinces. Consequently, the highest institution of the Republic, the States-General, lacked any competence in the field of private law. Each province therefore had its own legal system, which originated for a large part in customary law. Legal diversity was an inevitable result of this situation, although this diversity was mitigated as a consequence of the considerable influence of Roman law.[11] Strictly speaking, these legal systems were not "regionnal", but "national". However, that does not mean that "regional" law did not exist in the Republic. Within these provinces, smaller territories often had some divergent rules of private law as well.[12]

Thus, "regional" private law is a feature of states, where regions have autonomous competences in the field of private law. However, since the nineteenth century, such states

10 J.H.A Lokin & W.J. Zwalve, Hoofdstukken uit de Europese codificatiegeschiedenis (Groningen 1992), p. 142-148.

11 Thus, in the province of Holland, so-called "Roman-Dutch law" was applied and in the province of Friesland so-called "Roman-Frisian law". Cf. for the latter: J.H.A. Lokin, C.J.H. Jansen & F. Brandsma, The Roman-Frisian law of the 17th and 18th century (Berlin 2003).

12 See for the province of Groningen: J.H.A. Lokin, "SPEIP 96a ofwel Bartolus en het Ommelander Landrecht" in: Bibliotheek, wetenschap en cultuur. Opstellen aangeboden aan mr. W.R.H. Koops (Groningen 1990), p. 308-320 (311).

have become rare in Western Europe. In the course of the eighteenth and nineteenth centuries, the system of "multi-level governance" that characterised most Western European states was increasingly perceived as an anomaly. The central government aspired to strengthen its hold on the regions and their populations. A state where the most important competences were exercised at a central level became an ever more appealing goal, at least in the circles of civil servants. To some extent, European states were forced to pursue such a policy because they were fiercely competitive with the neighbouring states.

It was inevitable that the centralisation of government would lead to a policy of harmonisation as well. After all, from a present-day perspective, the organisation of the premodern state was not very transparent. The central government was in fact practically blind due to the substantial diversity between regions.[13] Standardisation of matters such as measures, weights, and currency would enable civil servants in the capital to make a detailed and accessible map of the country. This facilitated governing the country considerably. It is all too obvious that a modern central government also would profit from the creation of individualised citizens, dissociated from intermediary groups such as regions, guilds, churches, and families. In addition, these citizens would preferably all enjoy equal rights in administrative and juridical respect, because then they could move easily to other regions. Finally, cultural homogeneity within the same state was increasingly seen as a necessary ideal as well.[14]

The emergence of the ideal of a centralised state also had serious implications for the law. Until 1800, legal diversity was the rule. Every region had its own system of private law, and even within some regions, substantial legal varieties sometimes existed. In the nineteenth century, most European states put an end to this situation by means of the introduction of a civil code.[15] After all, the main feature of these codifications was its exclusive effect, abolishing all sources of law other than statutes. Ever since, the view is in the ascendant that laws should be uniform, at least within a single state. In 1804, France introduced the Code civil with the specific purpose of removing regional law and replacing it with a uniform legal system. In the Dutch Republic, which under French guidance had been transformed into the Batavian Republic, radical changes were brought about as well. In 1798, during the Batavian Revolution, the sovereignty of the provinces was eliminated and the unitary state was established. Subsequently, as mentioned above, a codification based on the French model was promulgated in 1809, creating national legal unity. Most other Western European countries followed their example sooner or later.[16] As a consequence of these codifications, the regional and local systems of law were

13 J.C. Scott, Seeing like a state. How certain schemes to improve the human condition have failed (New Haven/London 1998), p. 2.

14 H.P. Glenn, "Legal cultures and legal traditions" in: M. Van Hoecke (ed.), Epistemology and methodology of comparative law (Oxford/Portland, Oregon 2004), p. 7-20 (15-16).

15 See generally on this development: P.A.J. van den Berg, The politics of European codification. A history of the unification of law in France, Prussia, the Austrian Monarchy and the Netherlands (Groningen 2007).

16 Following its political unification, Italy promulgated the Codice civile in 1865. Germany followed in 1900, with the introduction of the Bürgerliche Gesetzbuch (BGB). Even Switzerland, although not a uni-

marginalised. Presently, as stated earlier, most European states have their own national and uniform rules of private law. This is the result of the implementation of what is sometimes referred to as the "ideology of legal centralism".[17]

Nevertheless, it is doubtful whether the codifications actually brought about legal unity.[18] Admittedly, the abstract rules are the same, but the interpretation of them can differ per judge and, thus, under certain circumstances, per region. A uniform interpretation comes closer if cases are submitted to a supreme court, but that does not happen always and is sometimes not even possible. Moreover, not all conflicts with a legal bearing are settled in a formal way. Finally, in many situations concerning private law, parties can deviate from non-mandatory rules. Consequently, behind the façade of a uniform civil code, a substantial legal diversity can be hidden. Thus, it could be argued that a codification is at least as much a symbol of legal unity as its realisation. This symbolic value should not be underestimated, because a uniform codification provides a sense of unity. In this way, it serves its major political purpose, which is creating a sense of national unity and identity. However, since the legal diversity in this situation does not have an institutional setting, it does not fall within the scope of "regional law" as defined above.

2. The emergence of the ideal of legal unity

The centralisation of legislative competences was accompanied by a changing attitude towards law and legal diversity. Until the seventeenth century, the ideal of legal unity was not self-evident. The guiding principle was that in every society, two different kinds of rules existed. On the one hand, it was widely accepted that each people used rules that it had in common with all other peoples. On the other hand, it was undisputed that a substantial part of the law had to be tailored to the specific circumstances of the people for whom they were meant. It was firmly believed that physical differences between different communities necessitated legal diversity. A people that lived in a desert was supposed to need other rules than a people that settled in an area abounding in water. This view, usually referred to as the theory of climate, can already be found in the writings of Plato and Aristotle.[19] In the Middle Ages, this view was frequently expressed as well, for example in the Decretum Gratiani.[20] It should be noted that this theory was not limited to the relationship between climate and law. The character and customs of a people were also believed to be influenced by the specific physical environment in which they lived.[21]

tary state, adopted a uniform civil code in 1912.

17 J. Griffiths, "What is legal pluralism?", Journal of legal pluralism and unofficial law 24 (1986), p. 1-55 (4-5).

18 Griffiths, "What is legal pluralism?", p. 3. J.H.A. Lokin & Zwalve, Hoofdstukken uit de Europese codificatiegeschiedenis, p. 278.

19 Plato, The laws (Harmondsworth 1984; T.J. Saunders (ed.)), book 5, §9. Aristotle, The politics (Cambridge 1988; S. Everson (ed.)), book 7.

20 Distinctio 4, canon 2.

21 Cf. the book by John Barclay (1582-1621), titled Icon Animorum (London 1614), in which he describes

For a present-day person, the theory of climate is somewhat counterintuitive, because over the last centuries, uniformity has become ever more appealing. An example is, therefore, in place.[22] In the early nineteenth century, an English owner of cattle that escaped and damaged the crops of a neighbour was held liable for the losses. Obviously, he was expected to fence off his land in such a way as to be able to control his animals properly. This was a logical solution for a populous country. In contrast, the British colonies in North America were sparsely populated and the legal rules reflected this. There, the owner of agricultural land had to fence off his property if he wanted to be compensated for damage caused by animals. Besides, the theory of climate not only necessitated that legal rules were adapted to physical differences, for example with regard to geography. It was generally accepted that legal rules had to be suited to the temperament and beliefs of the population for which they were meant. This made sense, because, as stated above, the theory of climate was also applied with regard to these mental aspects of human society. In conclusion, law was predominantly seen as a result of identity, not as an instrument to create it. Unlike today, law was not regarded as a tool that was appropriate to steer society in a specific direction.

In line with the dominant view that law in principle had to follow the identity of a people and that legal diversity was, therefore, inevitable, pleas for legal unity were scarce until the seventeenth century. However, some early examples can be found in France.[23] In the fifteenth century, the French King Louis XI (1423-1483) is reported to have embraced the ideal of a national uniform law. Almost a century later, Chancellor Michel de l'Hospital (1504-1573) also suggested introducing legal unity. But his suggestion should probably be seen more as a corollary to the ideal of religious unity, which had become by that time jeopardised by the Protestant movement, than a goal in itself. Finally, the proposals of Charles Dumoulin (1500-1566), an avocat at the bar of Paris, merit some attention. In 1539, Dumoulin had written an important commentary on the Coutume de Paris, clearly adopting a national perspective. At the end of his life, Dumoulin proposed introducing uniform laws, arguing that this would be an effective means to keep the provinces united under the same ruler. He challenged the two main objections to the creation of legal unity. He countered the constitutional objection with recourse to the raison d'état, arguing that unity was useful to the state. He also opposed the view that legal diversity was necessary in France, because of the variety of customs and traditions of the separate provinces. He did not, however, question the theory of climate as such. He maintained that in the past, France was populated by one Gaulish people and that this people still constituted the population of contemporary France.

In the seventeenth century, however, the theory of climate as an explanation and justification of legal diversity came under fire as a corollary of the rising popularity

the habits and institutions of the peoples of Europe from the vantage point that these are determined by their habitat.

22 The example is taken from K. Zweigert & H. Kötz, An introduction to comparative law (Oxford 1998), p. 240.

23 Van den Berg, The politics of European codification, p. 128-131.

of natural law theory. Increasingly, the emphasis was placed on the proportion of law that was regarded as common to all peoples. The emergence of mathematics as a science contributed considerably to the idea of the universal nature of law, also due to the influence of the writings of René Descartes (1596-1650). In Germany, for example, the Cartesian method was applied to law by Samuel Pufendorf (1632-1694), who wrote influential books in natural law.[24] Sometimes, this resulted in the radical view that there was only one interpretation of justice possible and that, therefore, law should be the same all over the world. In this view, individuals deserved the same treatment everywhere. Characteristic for this opinion are the following lines taken from the sardonic 294th pensée of the French philosopher Blaise Pascal (1623-1662): "Plaisante justice qu'une rivière borne! Verité au deça des Pyrénées. Erreur au dela."[25]

In this universalist view of natural law, there was no impediment whatsoever to the introduction of uniform legal rules anywhere in the world. The existing legal diversity was no longer seen as a result of differences in physical circumstances, but explained as a remnant of the feudal era.[26] It was argued that local feudal rulers deliberately created legal rules that differed from those of the neighbouring areas in an attempt to provide their own population with a distinctive identity. Antoine Loisel (1536-1617), an avocat at the bar of Paris, put this opinion in words as early as 1607, in a book titled Institutes.[27] The famous seventeenth century legal scholar Jean Domat (1625-1696) also embraced this explanation of legal diversity.[28] In their footsteps, it was reiterated many times as a building block of an argument in favour of introducing uniform laws, for example by Voltaire (1694-1778) and Jean-Ignace Jacqueminot (1758-1813).[29] The latter was a member of a committee that presented a draft for a civil code in December 1799, shortly after the coup d'état by Napoleon. In the Netherlands, the existing legal diversity was explained in this way as well, particularly by the proponents of a unitary state during the Batavian Revolution.[30] It should be noted that the idea that law could be used in a more instrumental manner was inherent in this view. After all, law was obviously seen as a means of creating the identity of a population. As we will see in due course, this view would become commonplace in the nineteenth century, partly under the influence of the writings of Rousseau.

In the eighteenth century, this universalist view on law still gained many adherents and was frequently used in support of a plea for legal unity. Christian Wolff (1679-1754), a

24 F. Wieacker, Privatrechtsgeschichte der Neuzeit (Göttingen 1967), p. 307-308.

25 Pensées de Blaise Pascal (Paris 1904; L. Brunschvicg (ed.)), p. 216.

26 Van den Berg, The politics of European codification, p. 21 and 132.

27 Van den Berg, The politics of European codification, p. 132.

28 J. Domat, Les lois civiles dans leur ordre naturel I (Paris 1713), "Préface", p. 3-4. Van den Berg, The politics of European codification, p. 21.

29 Voltaire, Oeuvres complètes 19 (Paris 1879), p. 180-181. P.A. Fenet, Recueil complet des travaux préparatoires du Code civil I (Paris 1827), p. 527. Van den Berg, The politics of European codification, p. 152-153 and 205.

30 L. de Gou, Het Plan van Constitutie van 1796: chronologische bewerking van het archief van de Eerste Constitutiecommissie (The Hague 1975), p. 41, 44 and 74.

German philosopher who originally had been a mathematician, believed that rules of law could be devised more geometrico, that is by deductive reasoning.[31] He was convinced that all laws could be unified on the basis of natural law. However, there were some propositions implicit in the theory of natural law that easily could lead to a weakening of its universalist pretensions. At an early stage, Christian Thomasius (1655-1728), an influential German professor of natural law, already argued that it was a requirement of reason to have laws that matched the interests and specificities of the society they were meant for.[32] He emphasised that governments should respect the freedom of its citizens while exercising authority. Since laws were considered crucial in determining the precise boundaries of the competences of the institutions of the state, it was imperative that citizens were able to understand these laws.[33] Freedom consisted of having your own laws, written in your own language, Thomasius concluded. A regionalised version of the theory of natural law had come into existence. In the Netherlands, an early exponent of this view was the jurist and civil servant Johan Schrassert (1687-1756), who was educated at the University of Harderwijk.[34] In the second half of the eighteenth century, this version of the theory of natural law was propagated by the influential German jurist and theologian Frederik Adolph van der Marck (1719-1800), who was appointed to the Chair of Public Laws at Groningen University in 1758.[35]

In 1748, the attenuation of the universalist natural law concept got a new impulse as a result of the publication of a book by Montesquieu (1689-1755), De l'esprit des lois.[36] In this renowned book, Montesquieu revitalised the theory of climate and broadened its scope.[37] Admittedly, Montesquieu placed himself at least nominally in the universalist tradition, accepting that human reason was a law in the sense that it governed all people. He immediately added, however, that this "law" implied that the legal rules of a specific people should be suited to its character and to the specific physical circumstances under which it lived. Since he held that it was likely that a state consisted of more than one people, he accepted the existence of legal diversity within the same state. He had little appreciation of endeavours to achieve uniformity, as he remarked: "Il y a de certaines idées d'uniformité qui saisissent quelquefois les grands esprits (car elles ont touché Charlemagne), mais qui frappent infailliblement les petits".[38]

31 Van den Berg, The politics of European codification, p. 21.

32 Van den Berg, The politics of European codification, p. 22.

33 R. Lieberwirth, "Christian Thomasius und die Gesetzgebung" in: W. Schneiders (ed.), Christian Thomasius 1655-1728. Interpretationen zu Werken und Wirkung (Hamburg 1989), p. 173-186 (180-181).

34 P.A.J. van den Berg, "Recht en nationale identiteit in de Bataafs-Franse periode" in: F. Grijzenhout, N. van Sas & W. Velema (eds.), Het Bataafse experiment, Politiek en cultuur rond 1800 (Nijmegen 2013), p. 103-123 (106).

35 Van den Berg, The politics of European codification, p. 219.

36 Van den Berg, The politics of European codification, p. 149-151.

37 Montesquieu, De l'esprit des lois I (Paris 1961; G. Truc (ed.)), p. 10-11. Cf. for the development of this topos in the writings of Montesquieu: R. Shackleton, "The evolution of Montesquieu's theory of climate", Revue Internationale de Philosophie 32 (1955), p. 317-329.

38 Montesquieu, De l'esprit des lois II, p. 295.

In the second half of the eighteenth century, the loss of prestige of the universalist natural law philosophy and the accompanying revaluation of the theory of climate was reflected in the debate on the necessity of uniformity of law. Now supported by the authority of Montesquieu, writers invoked this theory in their argument against legal unity with renewed zeal. In 1772, the versatile jurist Justus Möser (1720-1794), who served the government of the diocese of Osnabrück as an official since 1747, wrote an essay with the significant title "Der jetzige Hang zu allgemeinen Gesetzen und Verordnungen ist der gemeinen Freiheit gefährlich".[39] In this essay, he criticised the plans to unify the laws of the Holy Roman Empire.[40] Of course, Möser used the theory of climate in this essay, but he was also convinced that introducing uniform laws would jeopardise freedom.[41] Like Montesquieu, Möser spoke out for the present political order based on the Three Estates in which intermediate bodies, such as provinces, cities, and guilds, limited royal authority. Legal diversity was a necessary feature of this order, since these bodies had autonomous legislative competences. In his view, these competences should not be centralized. On the contrary, legal customs should continue to prevail over provincial laws, which in turn should take precedence over national laws. Möser clearly emphasized the importance of customary law, thus anticipating the ideas of the famous nineteenth century German legal scholar Friedrich Carl von Savigny (1779-1861).

The renewed recognition of the theory of climate did not imply a complete return to the situation predating the era of the universalist natural law philosophers, however. Firstly, the universalist view on law never entirely disappeared. It was, for example, defended by Jean-Antoine-Nicolas de Caritat de Condorcet (1743-1794), a mathematician and a firm believer in progressive enlightenment. Condorcet, who exerted considerable influence during the French Revolution as a member of the Convention, challenged the existing legal diversity invoking his belief in a rational and universal natural law.[42]

Secondly, the regionalised version of the natural law theory remained popular. Although the universalist pretensions were weakened by this theory, its adherents were still under the spell of natural law ideas. They did not return to the traditional theory of climate and were, therefore, less hostile to some harmonisation of legal rules. In France, Voltaire was probably a representative of this theory.[43] In the Netherlands, the clergyman Gerard Jacob Georg Bacot (1743-) expressed these views.[44] Bacot, who had received a

39 Van den Berg, The politics of European codification, p. 54-55. See for Möser: K.H.L. Welker, Rechtsgeschichte als Rechtspolitik: Justus Möser als Jurist und Staatsmann (Osnabrück 1996).

40 Since 1512, the official name was "Holy Roman Empire of the German Nation".

41 In Prussia, these two arguments were also used against plans to unify the law by Johann Wilhelm Bernard Hymmen (1725-1787) and Johann Georg Schlosser (1739-1799). Van den Berg, The politics of European codification, p. 74-75.

42 Van den Berg, The politics of European codification, p. 197.

43 Van den Berg, The politics of European codification, p. 152-153.

44 Van den Berg, The politics of European codification, p. 241. Other exponents of this view were Frederik Willem Pestel (1724-1805) and Meinard Tydeman (1741-1825). Pestel, who was born in Germany, held a chair in legal philosopy at the University of Leiden. Tydeman was professor of law at the University of Utrecht. Van den Berg, "Recht en nationale identiteit", p. 106-107.

doctorate from Van der Marck, advocated a code of law which consisted partly of laws of a general validity and partly of laws specifically suited to the Dutch Republic. Since he regarded the Dutch people as one entity, the second section of this code could be uniform throughout the Republic.

Finally, the opinion on the relation between law and society had fundamentally changed. Law was now also seen as a neutral instrument that was appropriate to steer society in the desired direction. To a certain extent, this is already inherent in the new explanation of the existing legal diversity, which was described above. In this view, differences with regard to law were arbitrary. They were created by feudal rulers in an attempt to particularise their territory from the neighbouring territories. Some authors put a positive spin on this explanation, for example Rousseau.[45] Rousseau favoured a government that ensured that the legal rules of its own state differed from those of the neighbouring states.[46] According to him, to have different laws for a state was desirable, not because physical differences made them necessary, but in order to strengthen the identity of the nation. He regarded the "nation" as a political entity, of which the identity had to be formed yet. Consequently, in his view, the content of the laws was irrelevant as long as they contributed to the emotional attachment to the "nation". In other words, laws were no longer regarded as the result of identity, but increasingly as instruments to create it. In a way, this was the theory of climate turned upside-down.

In this context, Tully uses the expression "constitutional nationalism".[47] According to Tully, modern constitutions are formally based on an agreement between individuals, on a social contract, and have the objective to create a new association. In this respect, they differ from traditional constitutions, which predominantly confirmed the existing organisation of a people. In the Netherlands, the self-educated Jacob van Manen Adrz. (1752-1822), a former tailor, was an important exponent of these revolutionary ideas.[48] After the Batavian Revolution of 1795, Van Manen became an influential member of the committee that was charged by the National Assembly to prepare a constitution for the Batavian Republic. Van Manen held that the Revolution of 1795 had removed the old regime and that, as a result, all laws related to that regime were abolished. Presently, the Batavian nation constituted a single sovereign entity in the process of concluding a new social contract, which would serve as a constitution. He regarded legal diversity within this new state as a theoretical impossibility, since it would contradict the sovereignty of the nation. Obviously, differences between the various regions of the Republic were ignored: the unity of the new association was axiomatic. At the same time, he argued that at least a part of the new constitution should be specific for the Republic, in order to distinguish it from the constitutions of the neighbouring states.[49]

45 Van den Berg, The politics of European codification, p. 33-34 and 157.

46 J.J. Rousseau, Oeuvres Complètes III (Dijon 1970), p. 958, 962 and 1535.

47 J. Tully, Strange multiplicity. Constitutionalism in an age of diversity (Cambridge 1995), p. 7-9, 58-60 and 66-68.

48 Van den Berg, The politics of European codification, p. 236.

49 De Gou, Het Plan, p. 17.

After the French Revolution, there were still adherents to the traditional theory of climate, who, supported by Montesquieu, expressed the opinion that legal diversity was inevitable because of the differences between the regions, even if these regions constituted one state. In France, Jacques-Antoine-Marie Cazalès (1758-1805), a former soldier, defended this view as a member of the Constituante.[50] In the Netherlands, Hendrik Constantijn Cras (1739-1820), a professor in natural law, constitutional law and international law, was a devoted adherent of the legislative theory of Montesquieu.[51] This proved to be important, because in 1798, Cras became the chairman of the committee charged with the task of preparing a codification of criminal, civil, and procedural law for the entire Republic. In this capacity, Cras was able to delay the realisation of a uniform civil code for several years. Another advocate of this view was the jurist Willem Ysbrand van Hamelsveld (1771-1835).[52] Van Hamelsveld, a lawyer from Amsterdam, argued that the Netherlands still consisted of seven different peoples each requiring specific legal provisions.[53] In his opinion, introducing legal unity would greatly harm the state.

Ultimately, however, the force of attraction of the traditional theory of climate proved limited. The three modern theories or tendencies worked together to occasion the dominance of the view that legal unity within the same state was necessary. In the nineteenth century, a policy of standardisation, rationalisation and harmonisation became a matter of course.[54]

III. The European Union and the ideal of legal unity

As stated earlier, the governmental structure of the European Union is often referred to as a system of "multi-level governance". At a supranational level, some important competences are exercised, but at the same time, substantial powers remain in place at a national level. Generally, this structure is presented as something new and modern. The idea is that the Union does not constitute a state (in wording) and is, therefore, not intended to realise the centralisation of sovereignty.[55] In this view, the system of "multi-level governance" becomes even desirable, because it could prevent the adverse effects of modern state building, such as nationalism and the tendency towards harmonisation. If indeed the Union develops into a postmodern political entity, without the ambition to

50 Archives Parlementaires de 1787 à 1860 I (Paris 1867), p. 570 and 577. Van den Berg, The politics of European codification, p. 191-192. In 1800, the argument was used by Antoine-Jacques-Claude-Joseph Boulay de la Meurthe (1761-1840), member of the Tribunat, in an effort to prevent the introduction of the Code civil. Van den Berg, The politics of European codification, p. 205.

51 Van den Berg, The politics of European codification, p. 252.

52 Van den Berg, The politics of European codification, p. 248. Another representative of this argument was Herman Hendrik Vitringa (1757-1801), an influential member of the National Assembly from 1796 until 1801. Van den Berg, The politics of European codification, p. 235.

53 Verhandeling over de middelen, om Nederlands vrijheid zuiver te genieten (Amsterdam 1796), p. 84-85.

54 Tully, Strange multiplicity, p. 67.

55 I. Pernice, "Europäisches und nationales Verfassungsrecht", Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 60 (2001), p. 148-188. S. Hobe, "Bedingungen, Verfahren und Chancen europäischer Verfassungsgebung", Europarecht 38 (2003), p. 1-16 (7-10).

become a state in the traditional sense, there will be room for some legal diversity. In the context of such a Union, there would be ample space for other forms of legal integration, offering more scope for legal pluralism.[56] However, there are some difficulties with the supposition that the Union will not be modelled after the traditional concept of a state.

The previous historical sketch clearly shows that "multi-level governance" is hardly a new concept. During the Ancien Régime, it was the governmental structure of many European states, including France, the Holy Roman Empire, and the Dutch Republic. It has also been revealed that such a governmental structure has an expiration date. It has, admittedly, functioned rather well for several centuries, but it was increasingly perceived as an anomaly. This changing attitude is connected to the growing popularity of the modern ideal of a state as described above. Since the end of the eighteenth century, the ideal state is characterised by a centralised sovereignty and a high degree of uniformity. There are several indications that the European Union is not able to break the spell of this ideal.[57] In this context, it is illustrative that it is presently frequently asserted that a "European people" already exists.[58] It is a distinct possibility, therefore, that the system of "multi-level governance" will be short-lived. Consequently, it is uncertain whether these regions will be granted substantial autonomy in the long run, despite the talk of a "Europe of the regions".

If this conclusion is correct, the continued existence of the national legal systems of private law as "regional law" could be in jeopardy as well. Admittedly, the "multi-level legal system" is sometimes defended as a beneficial corollary of the multi-level system of governance. Grundmann, for example, argues that the economy would benefit from legal diversity because it enables competition between legal rules.[59] As a result, legal rules would become more flexible and therefore be better suited to a modern and innovative society. However, there is hardly any doubt that legislation is an essential instrument for the European administration and that harmonisation will be an important goal. It is significant that the call for a uniform European codification of private law can already be heard for some time.[60] Moreover, it is not uncommon that proposals for such a codification

56 H. Schepel, "Legal pluralism in the European Union" in: P. Fitzpatrick & J.H. Bergeron (eds.), Europe's other: European law between modernity and postmodernity (Aldershot, Hampshire 1998), p. 47-66.

57 P. Fitzpatrick, "New Europe and old stories: mythology and legality in the European Union" in: P. Fitzpatrick & J.H. Bergeron (eds.), Europe's other: European law between modernity and postmodernity (Aldershot, Hampshire 1998), p. 27-45. G. de Búrca, The EU Constitution: in search of Europe's international identity (Groningen 2005).

58 P.A.J. van den Berg, "Burger" of "volk" als nieuw fundament voor de Europese Unie? Opmerkingen naar aanleiding van het Europese burgerschap in de Grondwet voor Europa", Nederlands Juristenblad 80 (2005), p. 1035-1038.

59 Grundmann, "The optional European Code", p. 709.

60 M. Van Hoecke, "L'idéologie d'un Code civil européen" in: Le Code Napoléon, un ancêtre vénéré? Mélanges offerts à Jacques Vanderlinden (Brussels 2004), p. 467-494. Van den Berg, "Lawyers as political entrepreneurs?", p. 184-189. Van den Berg, The politics of European codification, p. 277-278. P.A.J. van den Berg, "Constitutive rhetoric: the case of the 'European civil code'" in: J.M. Milo, J.H.A. Lokin & J.M. Smits (eds.), Tradition, codification and unification. Comparative-historical essays on developments in civil law (Antwerp/Cambridge 2014), p. 45-70 (51-55).

are championed for political purposes.[61] Blase, for example, argues that with such a codification, Europe could show its political independence from the United States.[62] In the first instance, the harmonisation of contract law is envisaged, but the codification of other fields of private law is already seriously considered as well. Obviously, the debate on the future of European private law is in full swing. It is likely that many of the views on the benefits, drawbacks, and feasibility of introducing legal unity as expressed in the past will recur. It is this debate that we consider now.

It has been concluded that the appreciation for legal diversity has been limited since the early nineteenth century and that national legal unity has become the standard. However, the traditional theory of climate, where legal rules are supposed to follow identity and not regarded as instruments to create it, is still adhered to and invoked in an argument against the introduction of a uniform European civil code. The most vocal advocate of this argument is probably Legrand, a Canadian professor of comparative law. Legrand emphasises not only that there are substantial differences between the English legal culture, the famous common law, and the legal cultures of the countries on the continent.[63] He also points out that the legal cultures of the continental Member States vary greatly as well. He is convinced that this legal diversity is not coincidental, but is the result of historical developments and related to a specific sociological configuration. According to him, the differences as to the law are closely connected to culture and are, thus, necessary in view of the specific circumstances and mentality of a country. Moreover, he believes that each of these cultures will develop autonomously. In his opinion, any convergence of the various legal cultures of Europe will inevitably be merely superficial.[64] It is, therefore, pointless to pursue the realisation of a uniform European civil code.

The adherents of the traditional theory of climate are in a minority, however. Many authors participating in the debate unequivocally oppose such a "culturalist approach" of private law. In an argument that is reminiscent of the natural law theory, they reject the assumption that law and culture are intimately intertwined.[65] Comparative lawyers

61 See for example: Von Bar, "From principles to codification", p. 385. O. Lando, "Principles of European contract law. An alternative or a precursor of European legislation", Rabelszeitschrift 56 (1992), p. 261-273 (262-263).

62 F. Blase, "A uniform European law of contracts – Why and how?", Columbia Journal of European Law 8 (2002), p. 487-491 (490). See also U. Mattei, "Hard minimal code now" in: S. Grundmann & J. Stuyck, An academic green paper on European contract law (The Hague/London/New York 2002), p. 215-233 (228).

63 P. Legrand, "On the unbearable localness of the law: Academic fallacies and unseasonable observations", European Review of Private Law 1 (2002), p. 61-76 (64). P. Legrand, "The impossibility of 'legal transplants'", Maastricht Journal 4 (1997), p. 111-124.

64 This view is supported by Geertz, who argues that interaction between cultures usually does not lead to convergence. C. Geertz, "The uses of diversity", Michigan Quarterly Review 25/1 (1986), p. 105-123 (109). Van Hoecke rejects the argument of Legrand, stating that a legal culture "is an open and dynamic, not a closed and static entity". M. Van Hoecke, "The harmonisation of private law in Europe: some misunderstandings" in: M. Van Hoecke & F. Ost (eds.), The harmonisation of European private law (Oxford/Portland, Oregon 2000), p. 5-9 and 19-20.

65 G. Betlem & E.H. Hondius, "European private law after the Treaty of Amsterdam", European Review of Private Law 9 (2001), p. 3-20 (18). G. Alpa, "European Community resolutions and the codification of

clearly predominate in this line of reasoning, which can be explained by the fact that the universalist concept of law has been especially popular in the discipline of comparative law since the early twentieth century.[66] These authors emphasise the purely technical character of property law and do not regard the provisions of this area of law as expressions of cultural norms and values. An exponent of this view is Van Gerven, an ardent supporter of a uniform European civil code.[67] He states that cultural differences do not constitute an obstacle to such a codification, arguing that the experience of both practising lawyers and professors of law reveal the universal nature of legal rules. In line with this view, he is convinced that codification is also desirable, because similar situations should be treated in the same way within the European Union.[68] Previously, this opinion was already expressed by Hallstein, the first president of the European Commission.[69]

Unsurprisingly, these authors often describe the view that the variety of legal rules as a manifestation of cultural diversity in pejorative terms, for example as "old-fashioned" or "conservative".[70] Hesselink associates legal diversity with nationalism, denoted as a dangerous ghost from the past.[71] In order to prevent the resurgence of this sentiment, he favours the development at a European level of a post-national private law.

In this context, the views of the Danish professor of law Lando merit some attention as well, because he is one of the founding fathers of the Principles of European Contract Law (PECL).[72] These principles have been developed on the basis of the legal systems of the Member States of the European Union, using the method of comparative law. Lando expressly rejects the universalist version of the national law theory, which entails that law can be the same everywhere in the world. According to Lando, rules with regard to contract law, for example, are not the result of some objective truth. Instead, they are related to the moral principles, the state of technology, and the economic structure of the

'private law'", European Review of Private Law 8 (2000), p. 321-332 (330). Cf. for the "cultural approach" of law: Roos,"NICE dreams and realities of European private law", p. 202-213.

66 J.M. Smits, "The principles of European Contract Law and the harmonisation of private law in Europe" in: A. Vacquer (ed.), La tercera parte de los principios de derecho contractual europeo (Valencia 2005), p. 567-590 (§ 3.3).

67 W. van Gerven, "Codifying European Law" in: M. Van Hoecke (ed.), Epistemology and methodology of comparative law (Oxford/Portland, Oregon 2004), p. 137-164 (145 en 147).

68 Banakas also invokes this argument, related to the natural law theory, arguing that legal unity is necessary in order to secure the just and equal treatment of all "European nationals". S. Banakas, "European tort law: is it possible?", European Review of Private Law 10 (2002), p. 363-375 (364-366).

69 See for the view of Hallstein: J. Basedow, "A common contract law for the common market", Common Market Law Review 33 (1996), p. 1169-1195 (1170).

70 Legrand, "On the unbearable localness of the law", p. 66 en 70. See also S. Weatherill, "Why object to the harmonization of private law by the EC?", European Review of Private Law 12 (2004), p. 633-659 (633).

71 M.W. Hesselink, "The politics of a European civil code", European Law Journal 10/6 (2004), p. 675-697 (679). See also M.W. Hesselink, The new European private law (The Hague 2001), chapter 2. Van den Berg, "Constitutive rhetoric", p. 65-66.

72 O. Lando, "Why codify the European law of contract?", European Review of Private Law 5 (1997), p. 525-535 (529-530). O. Lando, "European contract law after the year 2000", Common Market Law Review 1998), p. 821-831 (825-827). Lando, "Principles of European contract law", p. 263.

country for which they are designed. Subsequently, Lando states that the countries of the European Union are all Christian societies and that they therefore share the same legal-ethical values. In addition, there are no differences as to the economic structure between the Member States, since they all have a market economy that is controlled by the state. Given this common basis, he believes that there are no obstacles to end the existing legal diversity in Europe. He therefore favours the introduction of a uniform European civil code. This may sound like the theory of climate, but it is doubtful whether Lando should be regarded as an adherent to this theory. After all, the unity he presupposes is axiomatic as he seems to underestimate the cultural and physical differences in Europe. He is probably best categorised as an exponent of the regionalised version of the theory of natural law.

Of course, the inverted theory of climate that was made popular by Rousseau can also be encountered. In this view, law is regarded as an instrument that is suited to create or strengthen the identity of a people. Unsurprisingly, this approach is often suggested by the supporters of a European civil code, for example by Basedow.[73] He states that the codifications of the nineteenth century have contributed considerably to the national identity of the present Member States of the European Union. He subsequently argues that, today, this national identity is no longer dependent on these codes. These can, therefore, be used to develop and strengthen a European identity, which is still in statu nascendi. He obviously favours this policy and thus supports the introduction of a European civil code. Banakas discusses similar ideas, stating that the current codes of private law are expressions of the national legal identities of various Member States.[74] Since he is convinced that a European identity should be created, he believes that a uniform European codification of private law is required.

Interestingly, the inverted theory of climate is also invoked by Lequette, an opponent of a European civil code.[75] He states that the French Code civil has created a specific society in France and is today the expression of French identity. He argues that the Code has become the symbol of the French nation, playing an important part in the process of integrating immigrants into the French community. He opposes, therefore, the plans for a European codification, since this could eliminate the function of the Code civil of creating social cohesion in France. In fact, he rejects the idea of integration of the French nation into a "European people". Another opponent of a European civil code, Roos,

73 J. Basedow, "Codification of private law in the European Union: the making of a hybrid", European Review of Private Law 9 (2001), p. 35-49 (41). See also J. Basedow, "The case for a European contract law" in: S. Grundmann & J. Stuyck (eds.), An academic green paper on European contract law (The Hague/London/New York 2002), p. 147-157 (153-154).

74 Banakas, "European tort law: is it possible?", p. 364 366. See for other exponents of this view: Van den Berg, "Constitutive rhetoric", p. 53-55.

75 Y. Lequette, "Quelques remarques à propos du projet de code civil européen de M. von Bar", Recueil Le Dalloz 178/28 (2002), p. 2202-2214 (2206). Y. Lequette, "Vers un code civil européen", Pouvoirs: revue française d'études constitutionelles et politiques 107 (2003), p. 97-126 (104-105).

points at the dangers of using a codification for such political purposes on a European level. According to him, this could evoke anti-European sentiments.[76]

Whether the proposal for a uniform European codification of private law will be successful is, of course, uncertain.[77] Weatherill, who opposes such an endeavour, places his hope in a constitutional approach.[78] In his view, the provisions in the European Treaties on flexibility and subsidiarity can provide useful tools to protect "regional" systems of law, at least as far as they are of a cultural nature. He proposes to make an accurate catalogue of, on the one hand, rules that are only designed to solve conflict in view of an efficient operation of the market and, on the other hand, legal rules that are regarded as bearers of cultural values. With recourse to the principle of subsidiarity, the latter category should be left untouched. In this context, it should be noted that the property regime of the individual Member States is already protected in the Treaty of Functioning of the European Union.[79]

However, others question the effectiveness of such constitutional arrangements in resisting the "ideology of legal centralism". The implementation of concepts such as flexibility and subsidiarity is far from easy. Davies, for example, argues that the concept of "subsidiarity" presupposes that the ultimate competence is already vested in institutions at a central level.[80] That would imply that the categorisation as suggested by Weatherill will be carried out by institutions of the central government, which is in this case the European Union. Collins is sceptical as well, as he doubts whether it is possible to create a clear dividing line between technical legal rules on the one hand, and rules with a cultural bearing on the other.[81] Moreover, Collins is convinced that the question will not be whether European integration will lead to the creation of a European identity, but to what extent this should be furthered to the detriment of national, regional, and local traditions. Since he believes that a European codification will be a component of the policy to create such a European identity, harmonisation of provisions of private law will inevitably lead to a choice between the different cultural attitudes to many issues.

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76 N. Roos," NICE dreams and realities of European private law" in: M. Van Hoecke (ed.), Epistemology and methodology of comparative law (Oxford 2004), p. 197-228 (200-201).

77 Cf. D. Heirbaut, "Is Germany's past Europe's future? Unification and codification of private law in 19th century Germany and today's Europe" in: J.M. Milo, J.H.A. Lokin & J.M. Smits (eds.), Tradition, codification and unification. Comparative-historical essays on developments in civil law (Antwerp/Cambridge 2014), p. 71-100.

78 Weatherill, "Why object to the harmonization of private law by the EC?", p. 649-651.

79 Article 345 TFEU (ex Article 295 EC Treaty): "The Treaty shall in no way prejudice the rules in Member States governing the system of property ownership".

80 G. Davies, "Subsidiarity: the wrong idea, in the wrong place, at the wrong time", Common Market Law Review 43 (2006), p. 63-84.

81 H. Collins, "European private law and the cultural identity of states", European Review of Private Law 3 (1995), p. 353-365 (359 and 364-365). It should be noted that Collins favours the introduction of a European civil code. See H. Collins, The European civil code. The way forward (Cambridge 2008), p. 4, 94 and 101-103.

IV. The future of "regional" legal systems of private law in the European Union: a Conclusion

In the introduction, it has been noted that the increasing integration of Member States into the European Union has resulted in a system of government that is often referred to as "multi-level governance". In such a system, some competences are exercised at a central level, but substantial autonomous powers remain at a regional or local level. As a corollary, a "multi-level legal system" has developed as well, also in the field of private law. Consequently, the previously national systems of private law have become "regional" systems. Subsequently, the question of how the future of these former national legal systems will look has been raised. Three scenarios have been formulated: further regionalisation of private law by strengthening the legal systems of regions of the national states, retaining the present multi-level legal system in which European legislation and national law will coexist, or replacement of the national legal systems by a uniform European Civil code.

Subsequently, it has been argued that the structure of "multi-level governance" was common for many centuries, but that it was increasingly seen as an anomaly since the seventeenth century. In the modern concept of a state that has been dominant for the last two centuries, centralisation and unification are paramount objectives. With the rise of the modern concept of a state, the view regarding the relation between law and society has changed as well. Previously, the traditional theory of climate dominated, meaning that legal rules were deemed to follow the physical and mental characteristics of a community. Legal diversity, even within a state, was seen as a matter of course. From the seventeenth century onwards, the theory of natural law gained ground, which resulted in a strong belief in the universality of law and pleas for more legal unity. In addition, the attitude towards the function of law also altered. Increasingly, legal rules were considered to be instruments that were suited to steer society in a specific direction, and particularly to create national identity.

Finally, it has been established that the institutions of the European Union are unable to completely pull away from these new ideals about state and law. There are at least some indications that the model of the traditional national state has been adopted. Moreover, the debate on the future of private law in Europe shows that proponents of the traditional theory of climate, often used to defend the existing legal diversity, are a minority. Obviously, many participants in the debate adhere to either the theory of natural law or to the inverted theory of climate, which results in considerable support for a uniform European civil code.

It can be concluded from this overview that the first scenario, a further regionalisation, seems unlikely. On the contrary, there is evidence that the legal systems of private law of the Member States of the European Union will come under pressure as a result of the centralising tendencies. However, this does not necessarily mean that they will disappear. The civil codes of the nineteenth century have strengthened the national legal cultures, at least of the Member States on the continent, as a corollary to the process of nation-

building. It has been argued that there is, therefore, a serious risk that introducing a uniform European civil code will not further a European identity, as intended, but instead give rise to serious anti-European sentiments. Maybe, the reticence of the European institutions to unequivocally endorse the proposals and plans for such a codification must be considered in light of this argument. This would imply that the third scenario is not very likely to work either, at least not in the near future. The conclusion is most likely that the present situation of a multi-level legal system of private law will endure in the European Union for years to come.

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