UNIVERSITÀ
DI TRENTO
Facoltà di
Giurisprudenza

QUADERNI DELLA FACOLTÀ DI GIURISPRUDENZA

75

2024

Al fine di garantire la qualità scientifica della Collana di cui fa parte, il presente volume è stato valutato e approvato da un *Referee* esterno alla Facoltà a seguito di una procedura che ha garantito trasparenza di criteri valutativi, autonomia dei giudizi, anonimato reciproco del *Referee* nei confronti di Autori e Curatori.

ISBN 978-88-5541-053-3
ISSN 2284-2810

Gennaio 2024

THE MAKING OF EUROPEAN PRIVATE LAW: CHANGES AND CHALLENGES

ed. by
LUISA ANTONIOLLI
PAOLA IAMICELI

Università degli Studi di Trento 2024

To our students, and to the precious gift of learning together

TABLE OF CONTENTS

THE MAKING OF EUROPEAN PRIVATE LAW: A VIEW FROM THE CLASSROOM

Luisa Antoniolli and Paola Iamiceli[*]

TABLE OF CONTENTS: *1. The origin of the book: novelty and features of CEILS and teaching methods. 2. The role of European private law teaching in a transnational LLB programme. 3. European private law at the crossroad between comparative and EU law. 4. The roundtables: methodological choices. 5. The topics of the roundtables: reasons and* fil rouge*. 5.1. The book structure. 6. Teaching European private law in the 21st century: trends and challenges.*

1. The origin of the book: novelty and features of CEILS and teaching methods

Teaching is a collective venture. It implies the establishment of a learning relationship in which knowledge and skills are built through experiences based on mutual learning[1]. Such experiences involve stu-

[*] Luisa Antoniolli, University of Trento, Faculty of Law and School of International Studies.

Paola Iamiceli, University of Trento, Faculty of Law.

As part of the book design, the structure of both the introductory and the concluding chapters has been jointly devised and developed by the two editors; within this shared work, Paola Iamiceli has individually written the Introduction and Luisa Antoniolli the Concluding remarks.

We are extremely grateful to Vincenzo Tudisco for his invaluable support in editing the book's chapters.

[1] E.L. BOYER, *Scholarship reconsidered. Priorities of the professoriate*, The Carnegie Foundation for the Advancement of Teaching, Princeton, 1990, p. 24 («good teaching means that faculty, as scholars, are also learners. (…) While well-prepared lectures surely have a place, teaching, at its best, means not only transmitting knowledge, but *transforming* and *extending* it as well. Through reading, through classroom discussion, and surely through comments and questions posed by students, professors themselves will be pushed in creative directions»).

dents and professors, generating links well beyond the classroom, as this book will show.

Not only research feeds teaching, but teaching feeds research[2]. Students' questions challenge research results and provide hints for new paths in legal analysis. The same occurs when the classroom opens up to the stimuli coming from guest speakers, who bring in their own teaching and learning experience from other research backgrounds and diverse educational traditions. Standing at the crossroad between research and education, this book is based on a Roundtable Series developed across two courses respectively on *Foundations of Private Law from a EU Perspective* and *Comparative Private Law*, both mandatory course of the *Comparative European International Legal Studies* (hereinafter CEILS) Programme of the Trento Faculty of Law. It reflects the dialogue among the Authors, the students and other scholars taking part in the roundtables on key issues of European private law.

Student engagement and multicultural pluralism are at the core of the CEILS Programme. Since the very beginning, students are made aware of the richness of legal culture based upon a multitude of legal traditions, often influencing each other. They are exposed to the complexity of a multilevel system of sources of law, in which hierarchy is less and less relevant and the norm is more and more the result of a combined application of national, international and supranational sources of law, including general principles and rules, some of which based on customs, technical standards and social norms[3].

[2] E.L. BOYER, *op. cit.*, p. 15 seq. («Basic research has come to be viewed as the first and most essential form of scholarly activity, with other functions flowing from it. Scholars are academics who conduct research, publish, and then perhaps convey their knowledge to students or apply what they have learned. The latter functions grow *out of* scholarship, they are not to be considered a part of it. But knowledge is not necessarily developed in such a linear manner. The arrow of causality can, and frequently dies, point in *both* directions. Theory surely leads to practice. But practice also leads to theory. And teaching, at its best, shapes both research and practice»).

[3] N. LIPARI, *Trattato di diritto privato europeo*, Padova, 2003, p. 9 seq.; F. CAFAGGI, *The many features of transnational private rule making: the unexplored relationships between jura mercatorum, customs, and global regulatory law*, in *University of Pennsylvania Journal of International Law*, 2015, p. 101 seq.; R. BROWNSWORD ET AL.

Unlike in the conventional approach, where the comparative, transnational and international dimensions are *added* at a later stage upon the core layer of a nationally-driven education programme, CEILS students are from the start purposely guided across these dimensions in order to learn how they relate to each other and how the relevant norm may be designed, identified, interpreted in a world in which national and supranational norms co-exist[4]. This approach does not exclude that a student may later specialise in a given national legal system (including one that is different from the one of his or her country of origin). Still, as a *transnational lawyer*, he or she will be able to contextualise that system in a wider picture, building new links between the intra-systemic dimension and the supra-systemic one. Moreover, this student will be urged to compare national rules with those of other legal systems, to better understand the reasons behind policy choices and to exercise his or her critical thinking to look for alternatives to existing options.

Some methodological consequences stem from this approach to legal education. First, a single code or a single legislative text may no longer provide a sufficient structure to design the teaching activity: a functional and problem-based approach is needed in order to provide students with the basic instruments to face legal issues within a multi-level system of sources of law. Second, general principles and foundational rules become particularly relevant, helping the students to interpret complexity and to learn how to search for more specific legal contents, when needed. Third, comparative methodology becomes an essential component of legal education: awareness of pluralism in legal traditions necessarily leads to the need for methods aimed at a deeper knowledge of law through comparative understanding of legal models, as embedded in different legal cultures and developed along centuries.

(eds.), *Contract and Regulation. A Handbook on New Methods of Law Making in Private Law*, Cheltenham (UK), 2017.

[4] On these three dimensions, see S. VAN ERP, *Teaching Law in Europe: from an intra-systemic, via a trans-systemic, to a supra-systemic approach*, in A.W. HERINGA, B. AKKERMANS, *Educating European Lawyers*, Cambridge, 2011, p. 79 seq.

Indeed, as often said, history is an essential component of comparative law[5].

Moving from this perspective, this book aims to share with the academic community, including both scholars and students (both current and former ones), the outcomes of an extremely insightful teaching experience, built through the involvement of legal scholars with different research and educational backgrounds. The «roundtable format» has inspired vivid discussions about key issues in the field of European and comparative private law. This book is meant not only to reflect that richness, but also to ideally continue that dialogue involving new students and other scholars. We are extremely grateful to all the colleagues who contributed to this venture, including those who, inspiring our conversations and enriching the debate within the roundtables, could not participate in this book project.

2. The role of European private law teaching in a transnational LLB programme

When legal education is brought beyond the boundaries of a given national legal order, a question arises about whether this move towards «internationalisation» concerns only certain areas of law, or covers all of them, including those apparently having an intrinsically national connotation. A comparative study developed a few years ago in nineteen countries around the globe shows that, whereas the «internationalisation» of legal education has significantly grown in all examined countries, this change has rarely concerned areas such as property law, family law and even tort law[6]. When, in another scholarly work, the possibility of a «cosmopolitan» dimension of private law is questioned,

[5] R. SACCO, P. ROSSI, *Introduzione al diritto comparato*, Padova, 2015 (sixth ed.), p. 12.

[6] «For obvious reasons», as added by the editors; see C. JAMIN, W. VAN CAENEGEM, *The Internationalisation of Legal Education: General Report for the Vienna Congress of the International Academy of Comparative Law*, *20-26 July 2014*, in C. JAMIN, W. VAN CAENEGEM (eds.), *The Internationalisation of Legal Education*, Cham (Switzerland), 2016, p. 10 seq.

the attention is drawn on the role played by constitutional principles as the foundations of private law and the possibility to identify a sufficiently solid constitutional basis for private law beyond the boundaries of national charters and ground-norms[7].

Yet, moving from a relatively more limited perspective, the European dimension of legal education strongly characterised the rise of the first universities between the XI and the XIV century, when the main sources of private law were the «plurality of thousands local customs», and law professors provided students with «those conceptual categories, those ordering principles able to bringing order to the incomplete magma of social and economic facts» [8]. Based on the shared roots of Roman law, as revisited through the developments of *jus commune* by medieval scholarship, European legal culture represented an «authentic order» within the plurality of norms and customs[9].

In a totally different institutional context, dominated for centuries by national legal orders as the exclusive source of private law systems within Europe, the European dimension of private law today represents a reality that may no longer be ignored in legal education. This is due to both (*i*) the adoption by the European Union of regulatory instruments of hard and soft law in almost all areas of private law, and (*ii*) to the growth of European legal culture (even beyond the changing political boundaries of the EU) as reflected in the several bodies of general principles and reference frameworks developed by scholars and legal practitioners in different areas of European private law[10]. This adds to the impact that, in different ways, the Charter of Fundamental Rights of the EU (hereinafter, CFR) and the European Convention of Human Rights (hereinafter, ECHR) have progressively made upon national private

[7] H. COLLINS, *Cosmopolitanism and Transnational Private Law*, in *European Contract Law Review*, 2012, p. 311 seq.

[8] Free translation from P. GROSSI, *Il messaggio giuridico dell'Europa e la sua vitalità: ieri, oggi e domani*, in *Contratto e impresa. Europa*, 2003, p. 681 seq., part. p. 683.

[9] P. GROSSI, *L'Europa del diritto*, Bari, 2016, p. 45.

[10] A. HARTKAMP, *European Law and National Private Law. Effect of EU Law and European Human Rights Law on Legal Relationships between Individuals*, Cambridge, 2016, p. 3 seq.

law, especially through the general principles as interpreted and developed by the jurisprudence of the European courts[11].

Over the past decades, the European dimension has gained more and more relevance in private law and private law education. Not only entire areas of private law are dominated by EU hard law (e.g. data protection and consumer protection), but also those, for which the general frame of references continues to be based on national legal systems, are deeply affected by the European harmonisation processes, either directly or indirectly.

In fact, there is almost no area in which this influence has not been felt, often imposing radical changes in the use of legal concepts rooted in a long-standing tradition: new personhood rights have emerged within the European context[12]; changes have been directly or indirectly stimulated in family law and the law of minors[13]; the divide between individual and collective goods has been reshaped[14]; the *numerus clausus* principle, as applied to property rights, has not been formally challenged, but its «preservation» has triggered new forms of contamination among national property regimes across Member States[15]; freedom of testation has been influenced by the freedom of movement within the EU[16]; strict liability has become a cornerstone of national tort law, due to the need to ensure effective consumer protection against

[11] K. LENAERTS, *The Role of the EU Charter in the Member States*, in M. BOBEK, J. ADAMS-PRASSL (eds.), *The EU Charter of Fundamental Rights in the Members States*, Oxford, 2020, p. 19 seq.; F. CAFAGGI (ed.), *Judicial Cooperation in European Private Law*, Cheltenham, 2017; F. CASAROSA, M. MORARU (eds.), *The practice of judicial interaction in the field of fundamental rights*, Cheltenham (UK), 2022.

[12] See the contribution by S. van Erp in this book.

[13] See, e.g., the European Parliament resolution of 2017 on international adoptions or, in another area, the judgment of the Court of Justice (Judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385) on the issue of recognition of civil unions of same-sex couples.

[14] See, e.g., the Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage.

[15] See the Succession Regulation (EU) 2012/650, part. Article 31.

[16] See again (EU) Regulation 2021/650 and the ruling of the CJEU, Judgment of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755.

the circulation of unsafe products[17]; and finally, while the EU legislator continues to affirm that EU harmonisation does not affect traditional areas of contract law, such as formation and invalidity, in fact contract nullity has been radically influenced by the application of consumer protection directives, with a pivotal role for the Court of Justice in this field[18].

The making of European private law is a dynamic process: private national law changes (often as a result of European harmonisation); European law changes, too[19]. The expansion of the European mandate beyond the purely economic dimension of the single market and the recognition of the CFR as having the same legal force of the treaties, have opened up new spaces for European private law, particularly in the area of personal rights. The major role assumed by the EU as rule-setter in the area of digital law has placed the definition of a legal frame of reference in this field beyond the boundaries of national private law. This frame has become crucial for the protection of fundamental rights, and for the allocation of contractual and property rights linked to the use of digital technologies[20], with liability regimes[21]. The same move is more recently occurring in the field of sustainability, with an increasing attention to the role of contract law as a means for ensuring sustainability commitments along the supply chain, and the use of tort law as a means for collective redress in favour of workers, local communities and society at large[22]. Surprisingly (or maybe not), both in the field of artificial intelligence and in that one of sustainability, fault-based regimes gain back their central role in tort systems, which raises new

[17] See the Product Liability Directive (85/374/EEC), on whose pending reform the contribution by H. Sousa Antunes in this book provides a critical analysis.

[18] See, among the latest decisions, Judgment of 15 June 2023, *Bank M. SA*, C-520/21, EU:C:2023:478.

[19] See, 25 years after the publication of J.H.H. WEILER, *The Transformation of Europe*, in *Yale Law Journal*, 100, 1991, pp. 2403-2483, M. POIARES MADURO, M. WIND (eds.), *The Transformation of Europe Twenty-Five Years On*, Cambridge, 2017 (v. part. H. MICKLITZ, *The transformation of private law*, *ibidem*, p. 289 seq.).

[20] See the contribution of S. van Erp in this book.

[21] See the chapter of H. Sousa Antunes in this book.

[22] See Proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final).

questions on the dynamics of European private law-making and its impact on national private law systems[23].

Embedding these changes within legal education is imperative. The purpose is to make students aware about the complexity of private law construction within a multi-level system, in which national legal traditions feed EU law and EU law integrates national private law[24]. The result is not a homogeneous set of rules, as a plurality of legal traditions and approaches persists. Private lawyers need to cope with this complexity and be prepared for future changes and challenges.

3. European private law at the crossroad between comparative and EU law

That the first and most important function of comparative law is to foster a deeper knowledge of legal systems is a well-established thesis in comparative law scholarship[25]. It certainly applies to private law education and to legal curricula aimed not only to let student learn how persons, property, tort, contracts, etc., are regulated in a given legal system, but also to challenge these rules through a comparative analysis. Learning how certain objectives (e.g. making a binding promise) may be achieved, through different instruments with different effects, stimulates critical thinking and a deeper understanding of legal instruments.

When the European dimension of private law is apparent, the function of comparative law becomes even stronger. Being at the core of tens of scholarly statements of European general principles in the field of private law, it certainly inspires and sometimes steers law-making in the harmonisation process driven by EU institutions through the use of directives and (more and more) regulations[26]. To some extent, it also influences the transposition process by Member States, stimulating in-

[23] See the chapter of H. Sousa Antunes in this book.

[24] W. VAN GERVEN, *Bringing (Private) Laws Closer to Each Other at the European Level*, in F. CAFAGGI (ed.), *The Institutional Framework of European Private Law*, Oxford, 2006, p. 37 seq., part. p. 65 seq.

[25] R. SACCO, P. ROSSI, *op. cit.*, p. 9.

[26] See on this aspect the contribution by S. de Vries in this book.

teraction and mutual influence among national approaches with due respect for national specificities. The European legislator needs full understanding of the possibly different impact generated by the same EU rule or principle at the national level in light of a comparative assessment.

In a different way, comparative law impacts on the judicial dialogue between national courts and the Court of Justice of the European Union. Preliminary references highlight the relevance of EU law interpretation in light of the specific legal context of the referring court; in turn, preliminary rulings, though aimed at providing a uniform interpretation of EU law across Member States, may not be understood without considering the distinct features of the legal system of the referring court and the conclusions reached by the CJEU in the same field with regard to references presented by national courts from other MSs. In most cases, a question arises on whether and how a certain ruling may be applied in Member States that are different from the one of the referring court. Comparative law is an essential tool to address this analysis and students learning about the role of the Court of Justice in the making of European private law will be able to fully comprehend these mechanisms only through a solid comparative law methodology.

4. The roundtables: methodological choices

Roundtables are relatively common in conferences and media events, less common within university courses, where, by contrast, guest speakers are often invited to provide lectures as single speakers.

The main objective of a roundtable included in a university course is to foster a dialogue not only among speakers but also with students. Stimulating students' engagement through roundtables exposes learners to multiple perspectives and facilitates critical thinking.

The roundtables, on which this book is based, have been designed across two linked courses offered, respectively, in the first and second year of the CEILS Programme. This choice has favoured a certain continuity in the student's learning experience, allowing for a sort of inter-

generational dialogue among students, too. This dialogue will continue, also thanks to this book initiative.

Through the participation in the Roundtable series, students of European and comparative private law have been enabled to engage in an open discussion with prominent scholars and test their ability to use the knowledge and skills acquired during the courses to better understand, through an authentically plural and comparative experience, the current and prospective changes in European private law.

Cutting-edge issues have been chosen to stimulate multiple contributions and discussion. At the core of this choice stand the critical challenges posed by global phenomena, such as the digital revolution, the health global crises, and climate change.

The Roundtable series, now at its sixth edition, has hosted scholars from different countries and legal traditions. Not all of them could take part in this book initiative, but all of them provided invaluable insights for students and the scholarly debate, only partially reflected in this book.

5. The topics of the roundtables: reasons and fil rouge

The main objective pursued through the Roundtable series presented in this book has been to provide participants with an opportunity to discuss from a comparative law perspective current and future directions in European private law. Special attention has been given to major phenomena affecting society, such as the digital revolution, the health global crises, climate change and sustainability. Their impact on the existing private law architecture within the European Union context and on its constitutional foundations, including the protection of fundamental rights, has been at the core of the Roundtable discussion.

Indeed, revolutions and crises have led to major changes in private law taxonomies and concepts at the EU and national level. And both revolutions and crises have posed new challenges for the essential need to protect fundamental rights, while boosting innovation and economic development.

The digital revolution has radically changed the relationship between personhood and resources, subject and object of a given entitlement; it has introduced new forms of control over tangible and intangible goods, requiring new legal infrastructures and a new balance between economic and non-economic rights, individual and collective ones; new forms of contracting, new modes of expressing own personality and taking part in public debate, but also new forms of discrimination, new exploitation, new torts.

Similarly, health and climate crises have called for a new balance between individual and collective interests, challenging the very notion of private rights as a space of freedom within the boundaries imposed by law. The conventional taxonomy of private law, in property, contracts, torts law, needs to be revised, embedding a new balance between individual and collective interests. The proportionality principle, more commonly applied in public law contexts, becomes an essential instrument to strike this balance also in private law.

In order to face these phenomena, different approaches may be considered. At least in principle, the private law architecture could remain solidly anchored on its consolidated bases, while radical changes could be made only within discrete areas of law (digital private law, sustainability private law, and the like). But, in this perspective, an issue remains about how to set these different areas within a consistent general architecture. Alternatively, a more pervasive but softer change could be made, affecting the core concepts of private law in a way that make them consistent with old and new types of resources (e.g., those generated by digitalisation), and with old and new forms of balancing[27].

It is worth highlighting that, due to their global dimension and their impact on the future European society and market, both the digital revolution and the sustainability crisis have triggered major initiatives at the EU level, deeply influencing European and consequently national private law. In this regard, the possible tensions between the old and the new architecture intersect the multi-level approach of European private law and, therefore, the possible tensions between national and supranational sources.

[27] See the contribution of S. van Erp in this book.

In this complex setting, a question arises about the best regulatory approach and the optimal level of harmonisation, whether full or minimum, with wider or narrower room for private actors as standard-setters[28]. A key role is played by general principles and ground norms, established both at the national and, even more importantly, at the supranational level. The role of the CFR has grown enormously in law-making and case law and, in certain areas, it has boosted a principle-based harmonisation across Member States, even where national legislators have been more reluctant to incorporate fundamental rights in their transposing legislation. Not only direct effect of EU principles has been acknowledged by the EU Court, but also their horizontal dimension within private law relationships has gained ground in the European legal framework[29].

Moving from this perspective, the Authors have examined some of the major changes occurring in current European private law, questioning whether and to what extent new paradigms are needed to reconcile innovation, economic growth and fundamental rights. The recent EU initiatives in the field of digitalisation of markets, goods, services, transactions, are the main case studies for this analysis, covering some of the main challenges posed in the field of property, contract and tort law[30]. Moreover, the extent to which European private law is open to embed fundamental rights into its paradigms has been also examined in areas in which EU legal intervention has been rather limited or absent, such as housing[31].

5.1. The book structure

Moving along the lines presented above, the book structure reflects an ideal dialogue among the Authors, starting from the general architec-

[28] See the contribution of S. de Vries in this book.

[29] See the contributions of C. Mak and S. de Vries. in this book.

[30] Main reference is to the contributions of S. van Erp, S. de Vries, R. Schulze, F. Gomez Pomar and H. Sousa Antunes.

[31] So in the contributions of C. Mak and A. Afonso.

ture of private law discourse[32] and progressing through more specific challenges brought by the digital and climate revolutions: first, in major areas of private law, such as contracts[33] and torts[34]; second, in more specific sectors, such as housing[35].

In the first part, the Authors discuss whether a new approach to European private law-making is needed, moving towards a less individualistic approach and a new balance between autonomy and heteronomy. More precisely, it is questioned whether such move could be fulfilled through a «differential» approach, therefore calling for open-ended notions (such as the one of «access») as a flexible layer added to existing law, rather than through more radical changes of current taxonomies (e.g., those concerning concepts such as «ownership», «freehold» and «title»)[36]. From a comparable perspective, the role of human rights is also considered as a basis for a reconsideration of European private law architecture, embedding the «constitutional» dimension provided by the ECHR and the CFR[37]. Not only private law paradigms may be revisited in light of fundamental rights, but also, and conversely, European private law may contribute to societal transformations and the fulfilment of fundamental needs of individuals and groups[38]. To what extent does direct and horizontal application of fundamental rights contribute to this aim? How do fundamental rights and fundamental freedoms (such as freedom of movement) interact and foster new developments in European private law through a stronger focus on general interests and a more blurred divide between public and private? The role of the Court of Justice and that of EU law (primary legislation and regulations, more than directives) are specifically examined in this book, together with their impact on private actors, such as businesses and other private in-

[32] See the contributions by S. van Erp, C. Mak and S. de Vries.

[33] See the contributions by R. Schulze and F. Gomez Pomar.

[34] See the contribution by H. Sousa Antunes.

[35] See the contribution by A. Afonso.

[36] See the contribution by S. van Erp, observing that «To think outside of the box of existing law and break open our (legal) minds, overcome path dependency and avoid tunnel vision we do not have to be revolutionaries».

[37] See the contribution by C. Mak.

[38] This is one of the theses presented by C. Mak in this book.

stitutions whose action is particularly relevant in setting and applying the rules of the internal market[39].

In the second part of the book, the impact of these structural changes is examined in more specific areas of European private law. In particular, the Authors analyse the extent to which the digital revolution has influenced EU and MSs' contract law beyond the specific scope of application of EU directives and regulations, and whether the latter, though far from being the basis of a EU Civil Code, have somehow changed the role of national civil codes even when, as it is often the case, transposition has occurred out of their perimeter[40]. Although significant changes have been made in European contract law as a result of the EU Digital Market Strategy, to what extent have these changes addressed the many challenges posed by digitalisation? First and foremost, those posed to vulnerable consumers, more and more exposed to moral hazards and adverse selection problems linked with new forms of information and power asymmetry in the digital market. Moreover, how does digital market regulation interact with contract law and to what extent can effective consumer protection be guaranteed[41]? A critical view of existing and forthcoming EU legislation is provided not only in the field of contract law but also in the area of torts, today deeply influenced by AI regulation. Almost forty years after the product liability directive, a new balance is searched for among innovation, safety and effective consumer protection. Moving from a fundamental right perspective, both strengths and weaknesses in current legislative proposals are examined through the lens of the precautionary principle: is the fault-based regime envisaged by the proposed Directive on AI liability consistent with the purpose of effective consumer protection? Could alternative and more effective options be viable in the form of compensations funds[42]?

The debate among Authors presented in this book shows that the role of fundamental rights in the making of European private law is be-

[39] This is one of the theses presented by C. Mak in this book.

[40] See the contribution by R. Schulze in this book.

[41] These are some of the issues addressed by F. Gomez Pomar in his chapter.

[42] For an extended analysis of these issues, see the contribution of H. Sousa Antunes in this book.

coming crucial, with a deeper focus on the social dimension of European legal culture. To what extent, within the competence of EU institutions, can this approach extend the scope of EU intervention in new areas of private law, such as tenancy law? This is explored at the end of this book, where a soft law instrument is proposed as a possibly effective means of harmonisation in this field[43]. Indeed, while some Member States have introduced a right to housing in their constitutions and fundamental laws and a similar acknowledgment features in the European Social Charter, it can be questioned whether and how European private law could contribute to strike a better balance between landlords' and tenants' (fundamental) rights beyond the boundaries of existing consumer directives, whose impact has already been relevant in the context of the recent financial crisis[44].

6. Teaching European private law in the 21st century: trends and challenges

Teaching European private law is today even a more critical venture. Far from the horizon of a European Civil Code perspective, the current challenge is to examine whether and to what extent old taxonomies are sufficiently resilient to play new roles. Boosting innovation, while ensuring protection of fundamental rights through an adequate balancing based on the proportionality principle, is among the challenges faced in current times.

Entering the classroom, these challenges call for a problem-based approach to legal education. The multi-level structure of private law, as developed in the current European and global context, requires combining national private law with the European dimension. A comparative law approach is needed to fully understand the transformations of private law concepts in the plurality of legal traditions in which those concepts have been developed. A stronger connection between legal research and legal education may certainly help the new generation of

[43] See, in particular, the contribution by A. Afonso in this book.

[44] Both C. Mak's and A. Afonso's contributions provide interesting hints in this regard.

lawyers to better design the future of European private law and somehow reconcile innovation, growth, fundamental rights and justice.