The Common Core of Trento - A Socio-Legal Analysis of a Research Project on European Private Law
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The Common Core of Trento
A Socio-Legal Analysis of a
Research Project on European Private Law

Agnes Schreiner

1. Introduction

This article presents the first findings of a socio-legal study on European Legal Cultures that is centred around the Trento Project, which concerns research on the Common Core of European Private Law. It is part of the Research Programme on the Europeanisation of Private Law of the Amsterdam Institute for Private Law at the University of Amsterdam. Because the study is at an early stage, this article concerns itself mainly with the gathering and analysing of social and cultural data that may describe the Trento Project and its surroundings. Further research will consist of the participatory observation that began in 2003.

The first findings are based upon a contemporary type of literature survey, as they result first and foremost from researching the information on the internet. The information that has been studied includes (references to) scientific publications but also (to) non-scientific resource material such as mission statements, flyers, mailing lists, commercials, etc. Ordinary research would have gathered the latter type of material by going into the field. By use of the internet one can acquire both materials, i.e. scientific and non-scientific, and systematic and rough empirical material, at the same time.

The methodology of ‘googling’ has advantages and disadvantages similar to browsing in libraries. As to the online scientific literature, I have analysed the references up to the point where they were only referring to and amongst themselves. I included the literature on and from the Trento Project that is not on the net. This means that the outcome gives quite a complete picture. I used the same method of analysis for the other empirical data. Here I had help from the hyperlinks on the websites I visited. The outcome of this search along the links came to its natural end in the same way, namely at the point where the links are linking to and amongst themselves. These first findings demonstrate how far one can get using the internet as a methodological tool.

The questions I had in mind were, firstly: what is the Trento Project and how is it executed by its participants? I took the perspective of private law lawyers as social actors. Secondly: why do these private law lawyers want to be involved in a project like the Trento Project? As I pointed out before, this study is a preliminary one and will be continued. I welcome every comment. My email address is a.t.m.schreiner@uva.nl.
2. About Groups

Reading the title *The Common Core of Trento*, one really should notice the ‘r’ in ‘Common Core’ or else one might mix up the Trento research group with other projects that inquire into the possibilities for having a common code - with the ‘d’ - for all of Europe, such as the Study Group on a European Civil Code (SGECC), also known as the Von Bar or simply The Study Group. 1 Regarding its purposes, one could position the Study Group very much towards the right end of a scale that runs from ‘no code at all’, via ‘soft law’ (principles) to ‘hard law’ (statutes). After all, it considers itself the true successor of the Lando Commission, which formulated the Principles of European Contract Law (PECL), pushing the work of that commission further. 2 At the far right of the scale one will not find the European Commission as a key player within the legislative power of Europe, as might have been expected, but the Academy of European Private Lawyers, also known as the Gandolfi Group, which is actually writing a European Contract Code, book by book. 3 The European Commission can be placed at the very middle with soft and hard law on its right, as it does not consider these options to be realistic for the moment. 4 It concentrates its attention, therefore, on a Common Frame of References. 5

The Trento Group, with its search for the common core of European private law, however, may not be found on the scale of legislation purposes. It deals with how things are - common and different – in the national legal systems. In doing so, this group might be considered to be ‘prior to’ the projects that find themselves on that scale, or to be ‘at the bottom’ of those enterprises, while the Acquis Group – in order to complete the picture - is ‘after’ or ‘on top’ of these enterprises since that research group deals with the existing but fragmented European forms of legislation, such as EU treaties, EU directives, and harmonised national law, in order to establish the Principles of the Existing EC Private Law. 6

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1 See http://www.sgecc.net/ and further the contribution of Harm Schepel in this issue of *Recht der Werkelijkheid*.
2 See http://www.sgecc.net/media/download/stellungnahme_kommission_5_final1.pdf. The work of the research groups on private law is sometimes restricted to contract law, since contract law is seen as more neutral and therefore more successful from a harmonisation or unification point of view. This is a point of view that has been criticised extensively by the Critical Legal Studies movement, which is represented by the name and work of Duncan Kennedy. See for instance Duncan Kennedy, *The Political Stakes in “Merely Technical” Issues of Contract Law*. 9/1 European Review of Private Law/Revue européenne de droit privé/Europäische Zeitschrift für Privatrecht 7-28
4 In 2001, the EU Commission issued a Communication *On European Contract Law* for consulting the legal world and other stakeholders to be given their opinions on a few options. After having studied the responses the Commission presented an Action Plan 2003 that estimates the chances for a common soft or hard code of law for the moment. See http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/actionplan_en.htm
6 One may locate the Working Group on Uniform Terminology for European Private Law (Turin) on the right of this middle position of the European Commission.
7 See http://www.acquis-group.org/about.html.
On its website the Trento Group distinguishes itself explicitly from a project such as the Study Group: “The common feature of the two kinds of enterprises is the use of comparative methods, but this common methodology serves diverging purposes, and consequently produces different results.” This distinction does not imply that the SGECC and the Trento Project do not share a reasonable number of participants, chairpersons or organisers.

A comparison of the list of professors in The Study Group, who participate as members of its Coordinating Group and/or as advisors to one or more of its Working Teams, with the list of participants of the Trento Project shows that out of the 62 people, 19 are also active participants of the Trento Project, while another 16 SGECC professors have attended the annual meeting at least one time (4 of them as an invited speaker). One can be sure that there are names from the list of participants of one of the many other groups ‘on European Private Law’ that will also emerge from the Trento list.

A German metasite established by the Institute of International and Foreign Private Law of the University of Köln counts 11 different groups. In the meantime a new group (very much interrelated) can be added to this list, the Study Group on Social Justice in European Private Law or the Social Justice Group. The installation years, the working periods, and the first and/or main outcomes may reflect the actuality and the intensiveness of these working groups or institutions as well as the importance of Europe. See Table 1.

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7 See http://www.jus.unitn.it/dsg/common-core/approach.html.
8 Both lists were consulted on their respective websites visited on 2004-07-25. The list of the SGECC professors is an update of 2003. See http://www.sgecc.net/index.php?subsite=subsite_3&id=17. The Trento List of Participants consists of all those people who have been a participant at least once. It is an accumulative list of 619 different names updated 2004-07-08. See http://www.jus.unitn.it/scripts/dsg/commoncore.idc. (The site counts 624, but 5 names have been listed twice.)
9 See Wissenschaftliche Arbeitsgruppen und Einrichtungen zum Europäischen Privatrecht on http://www.ipr.uni-koeln.de/eurprivw/arbeitssituation.htm updated 2004-04-30 visited on 2004-07-27. The list actually counts 14 groups since it includes an EU information network on the internet (see http://eur.europa.eu/commm/justice_home/en/index_de.htm), and a recent association of European contract lawyers, SECOLA (see http://www.secola.org/). It also lists one German university centre, CEP (see http://www.uni-muenster.de/Jura.ce.p/index.html), while such centres do exist at other universities, and/or in other Member States, and/or even larger ones, e.g. European Centre of Tort and Insurance Law http://www.ectil.org/. Close to my own situation, I could mention the Amsterdam Institute for Private law with a research programme on the Europeanisation of Private law, see http://www.jur.uva.nl/aip/object.cfm?objectid=6A50093A-3786-453D-AF977FDFD74EE7259, and the broader Dutch/Belgian organisation and research programme of the Ius Commune, see http://www.rechten.unimaas.nl/ozic/ as well as http://www.law.kuleuven.ac.be/casebook/index.htm. See also http://www.martin-ebers.net/acsr/V1.htm (visited 2004-08-05), which shows 9 groups, 12 institutes, and 2 research networks considering Unidroit as an institute and the Working Group on Uniform Terminology for European Private Law as a research network. In table I I confine myself to groups since this study is on the Trento group.
The first organisation on the list, Unidroit, which came into existence within the context of the League of Nations, needed almost forty years to produce the The Hague Uniform Laws on International Sale of Goods, and another twenty years for the UN Convention on International Sales of Goods (CIGS). The fact that Europe had experienced World War I, then gone through the experience of World War II, is of course highly relevant here, since the war slowed down the work of this organisation for international integration but paradoxically also speeded it up.\(^\text{11}\) Later, in the eighties of the twentieth century, Unidroit began its work on the Principles for International Commercial Contracts; it took almost fifteen years for the first edition, plus another ten years for the second.\(^\text{12}\) In this respect Unidroit measures up to the Lando Commission, which spent thirteen years developing the Principles on European Contract Law. From then on, all the working groups needed less and less time according to the year that they were set up. There is one exception, namely the Storme Group on Civil Procedure Law. Despite the early year of its establishment the group needed only seven years, while the others had been working ten or more years at that time. This might have been caused by the commitment that the group probably felt towards the EC Commission, which was behind the formation of the group.\(^\text{13}\) From the early nineties onwards it becomes clear that the later a scholarly group had formed itself the faster the outcomes would come.

### Table 1 Groups, Projects, and Teams on European Private Law: Year of Establishment and Year(s) of the Main Outcomes

<table>
<thead>
<tr>
<th>Year of Establishment</th>
<th>Main Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994 Trento Project</td>
<td></td>
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<tr>
<td>1998 SGECC, Lando’s successor(^\text{14})</td>
<td></td>
</tr>
</tbody>
</table>

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\(^{13}\) See http://www.ipr.uni-koeln.de/eurprivr/arbeitsgruppen.htm#Storme-Gruppe.

\(^{14}\) The Edinburgh Working Team on Trust Law and The Nancy Working Team on Financial Services were announced.
The shortening of the working period might have been caused by the fact that the later groups could have built upon the experiences of the earlier groups. The existence of multiple memberships of participants from those research projects, which surely facilitates such exchanges, has been mentioned before. Furthermore, the extensive and intensive use of the internet, email, in short all digital modes, has speeded up the scholarly work. Another reason might have been the appearance of the 2001 Communication of the European Commission, by which the legal world was asked to give their opinion on the subject of European Contract law. This Communication came as a surprise even for most of the scholars who were active in the research groups. The responses, however, came in time and within two years the next outcome of the Commission was there, the 2003 Action Plan, followed by the 2004 Call for Expression of Interest - A network of stakeholder experts on the Common Frame of Reference.

These general remarks on the actuality and intensity of those working groups, based on the overview given in Table 1, left aside the differences in workload, number of participants, scholarly degree, subject, money, and publishers, which will all effect a particular date of outcome.

3. About the Money

Apart from Unidroit, which is financed by the annual contributions from its Member States, most of the research money has been raised from funds within the regional and national financing research systems, and from the ordinary financial resources of the universities.

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15 I thank Professor Katharina Boele-Woelki, who speaks from her experience as member of the Organising Committee of the Commission on European Family Law, for mentioning this reason.
16 See note 4.
18 See note 4 and 5.
19 Meetings in Trento had been sponsored in the past by MIUR - Ministero dell'Istruzione dell'Università e della Ricerca (Research Project: Il nucleo comune del diritto privato europeo - M. Bussani, editor; and
From 1997 onwards the European financial funds play an important role. It is interesting to note that there is a change in financing policies from the funding of static social institutions to the financing of dynamic social networks. The former funding allocated money to positions, functions and offices in order to establish a research institute. The latter type of financing supports a network of researchers that within itself allocates money to what is considered a proper contribution to the research network, which is connected by digital devices.

In November 1997 the Research Network on “Common Principles of European Private Law” - established between the universities of Münster, Barcelona, Berlin, Lyon, Nijmegen, Oxford, and Torino - was recognised by the European Commission as a Training and Mobility of Researchers Programme Network. This TMR Programme was part of the Fifth EU Framework Programme (FP5) that provided its networks with funds for the period 1998-2002 (lasting until 2006). Consequently, the TRM Network on Common Principles of European Private Law was able to finance international gatherings, support young researchers (stipendia), and contribute to the publication of results.

In case of approval, one third of 90 % of the money will go to:

Il nucleo comune del diritto privato nell'Europa "allargata" - M. Bussani, editor; Associazione R.B. Schlesinger per lo studio del Diritto Europeo (Trento); Centro Studi di Diritto Comparato (Trieste); I.S.A.I.D.A.T. - Istituto Subalpino per l'Analisi e l'Insegnamento del Diritto degli Scambi Internazionali (Torino); Fondazione Cassa di Risparmio di Trento e Rovereto; Dipartimento di Scienze Giuridiche dell'Università degli Studi di Trento; Consiglio Nazionale delle Ricerche di Roma Provincia Autonoma di Trento; Istituto Trentino di Cultura; Comune di Trento; Casa Editrice or Editores CEDAM (Padova), G. GIAPPICHELLI (Torino), and Dott. A. GIUFFRE (Milano). As for the publications, other funds are acting as sponsors as well. See for the regional approach and promotion in Italy Robert D. Putnam, Making Democracy Work. Civic Traditions in Modern Italy. Princeton University Press, Princeton NJ 1993, p. 97

Research Project: Il nucleo comune del diritto privato nell'Europa "allargata" - M. Bussani, editor; Associazione R.B. Schlesinger per lo studio del Diritto Europeo (Trento); Centro Studi di Diritto Comparato (Trieste); I.S.A.I.D.A.T. - Istituto Subalpino per l'Analisi e l'Insegnamento del Diritto degli Scambi Internazionali (Torino); Fondazione Cassa di Risparmio di Trento e Rovereto; Dipartimento di Scienze Giuridiche dell'Università degli Studi di Trento; Consiglio Nazionale delle Ricerche di Roma Provincia Autonoma di Trento; Istituto Trentino di Cultura; Comune di Trento; Casa Editrice or Editores CEDAM (Padova), G. GIAPPICHELLI (Torino), and Dott. A. GIUFFRE (Milano). As for the publications, other funds are acting as sponsors as well. See for the regional approach and promotion in Italy Robert D. Putnam, Making Democracy Work. Civic Traditions in Modern Italy. Princeton University Press, Princeton NJ 1993, p. 97

20 Until then, some funds were being raised, by the CEFL for instance, from the Grotius Programme Civil (1996-2000), see http://europa.eu.int/comm/justice_home/project/grotius_civil_en.htm.
21 The change in financing policies does not imply that the application form has changed into one that is more transparent. The digital information and application can easily compete with the former bureaucratic versions. One should try the cordis website mentioned in note 22.
24 Some of the money went to the Trento Project, see Bussani & Mattei (2000: xii).
26 I will continue to use the original city names instead of those being used by English native speakers, such as Trent, Cologne, Turin, or Warsaw, since I considered it to be in line with the use of what I have called Trentenglish, see The Common Core Of Trento - a semiotic analysis of a research project on European Private law (forthcoming).
27 See http://eoi.cordis.lu/dsp_details.cfm?ID=27178
the Acquis Group, two thirds to the SGECC, and 10 % will go to other groups.\textsuperscript{28} Trento is probably among the groups that are eligible for that 10 % (of approximately € 5 mln).\textsuperscript{29}

4. About the Trento Project

The full name of the Trento Project is the “Common Core of European Private Law Project”. It started in 1994. Mauro Bussani and Ugo Mattei took the initiative and invited 35 people to come to their then home university; the University of Trento (Università degli studi di Trento) at the Law Faculty at the Department of Jurisprudence (Dipartimento di Scienze Giuridiche Facolta di Giurisprudenza).

In 2004, on its 10th anniversary, 141 people registered for the meeting, which traditionally consists of a 3 day programme. The first day consists of an open session with invited speakers. The entire second day is for small group working sessions, organised along three main areas: Tort, Contract, and Property. The third and final day is again for a plenary session. One can expect another invited speaker (or two), the reports of the three committee chairs of the themes just mentioned, who by the way have a long time commitment (see Table 2), and last but not least a general discussion.

<table>
<thead>
<tr>
<th>Table 2 Main Themes, Committee Chairs as mentioned on the annual programme flyers over the first ten years.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tort</strong></td>
</tr>
<tr>
<td>Mathias Reimann, Michigan 1995-2002</td>
</tr>
<tr>
<td>Franz Werro, Fribourg 2003-2004</td>
</tr>
<tr>
<td><strong>Contract</strong></td>
</tr>
<tr>
<td>Simon Whittaker, Oxford 1995-97</td>
</tr>
<tr>
<td>Martijn Hesselink, Amsterdam 2003</td>
</tr>
<tr>
<td><strong>Property</strong></td>
</tr>
<tr>
<td>Antonio Gambaro, Milano 1995-2004</td>
</tr>
</tbody>
</table>

The general idea of the Common Core Project is that a case recently decided upon in one of the European Member States is discussed by legal experts from the other states. These experts will do so from the perspective of what their courts would have decided, in order to let the others learn about their legal system, the particular approach and

\begin{itemize}
  \item \textsuperscript{28} See Hesselink, \textit{op. cit.} note 10 note 145; \textit{op. cit.} note 17, p. 688-689, and the information from the interviews I had with key players.
\end{itemize}
application, and the social, cultural and economic circumstances.  
So the aim for each small group is to find as many different participants as there are legal systems. The European ideal type of small group might be a group of 15 active participants responding to a questionnaire consisting of 15 cases, that is, up until 2003. From 2004 onwards, 10 must be added to each number because of the extension of the European Union with 10 new Member States.

The Trento Project, however, made up its own Trento ideal type of small group. On the one hand, it has already set the number of cases that forms the questionnaire: “For the (…) need to reach sufficient detail without overwhelming ourselves and the future readers with an excessive number of data, the number of issues in the questionnaire, although slightly variable, should not be more than 15, maximum 20.” The use of the word ‘issues’ instead of ‘cases’ shows that the drafters of the questionnaire reconstruct and redevelop issues from cases as well as from doctrinal and practical importance. In doing so, the questionnaires turn out to be more like a student exam than a litigational dossier.

With regard to the participants, on the other hand, the exact number of Member States is not necessarily the best. As the website puts it “… we assume that for the purpose of comparative scholarship the internal lawyer is not necessarily the best reporter on his or her own system. He or she may control a larger number of information about the system than a foreign lawyer, and it is out of the question that committed nationals of all Member States are a big asset of our project. The point is, however, that nationals may be less well equipped in detecting the hidden data and the rhetorical attitude - because they may be misled by automatic assumptions.” Hence the Trento Project recruited comparative law scholars who may be considered experts in other legal systems besides their own. That is why one will find active participants from parts of the world other than those that form the European Union. See Table 3.

| Table 3 Nationalities according to the affiliations of the Active Participants (incl. Chairpersons and Editors) as listed on Trento’s website (visited 2004-08-10) |

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30 One might recognise the legal formants as developed by Rodolfo Sacco. I will come to that later.
33 I only counted the nationality extensions of the email addresses, since the list does not make it clear if the active participant is a reporter for his or her home country or for the country where he or she has a position.
The legal education and/or practice in a bilegal system such as in Canada, Louisiana, South Africa, Scotland, or Cataluña, as experienced by some of the active participants, are naturally of great importance to the project. Besides these explicit interlegal expertises, the other national legal, doctrinal, or practical expertises within the project will also become interlegal in due course.

All this adds up to a subgroup such as the one on Strict Liability, with two editors, who are Law Professors and Directors of an Institute of European Law or European Legal Studies from Switzerland and Louisiana, and 20 participants: 8 Law Professors (2 from Austria, 1 from England, Finland, France, Greece, Portugal, and The Netherlands), 3 other university legal scholars (Denmark, Greece, Scotland), 1 Doctoral Candidate (Switzerland), 3 Comparative Law Professors (1 from Germany, 2 from Italy), 1 Canon Law Professor (Spain), 1 Professor of Economics (Germany), 1 Judge (Denmark), and 2 Lawyers (Germany, Spain).34

The 2004 meeting programme consisted of 10 out of an initial total of 14 small groups, recognisable by their number of participants in Table 4. Some of these small groups have only ten or even less active participants, while other groups have numbers in the high twenties and even thirty participants. The fact that some groups have only just begun drafting a questionnaire, while others are already discussing or evaluating the national reports, is responsible for these differences in numbers of participants. Table 4 shows five more items without the number of participants. These groups do not meet anymore, since the work has been done, is waiting for publication or has been published.35

<table>
<thead>
<tr>
<th>European Union up until 2004</th>
<th>European Union from 2004 on</th>
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</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>11</td>
</tr>
<tr>
<td>Germany</td>
<td>23</td>
</tr>
<tr>
<td>France</td>
<td>10</td>
</tr>
<tr>
<td>Italy</td>
<td>25</td>
</tr>
<tr>
<td>Luxembourgh</td>
<td>1</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>17</td>
</tr>
<tr>
<td>Denmark</td>
<td>11</td>
</tr>
<tr>
<td>Ireland</td>
<td>7</td>
</tr>
<tr>
<td>UK</td>
<td>30</td>
</tr>
<tr>
<td>(incl. Scotland 9)</td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>9</td>
</tr>
<tr>
<td>Portugal</td>
<td>8</td>
</tr>
<tr>
<td>Spain</td>
<td>13</td>
</tr>
<tr>
<td>Austria</td>
<td>13</td>
</tr>
<tr>
<td>Finland</td>
<td>11</td>
</tr>
<tr>
<td>Sweden</td>
<td>9</td>
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</tbody>
</table>

35 There is one exception: the working group on Information as Property (Sjef van Erp, Maastricht). This group stopped working after having drafted the questionnaire, since there were not enough reporters. With the new group on Boundaries of Information Property, however, the theme will still be on the agenda of Trento’s meetings.
Table 4 Small Groups, their theme, represented by their outcome and editor(s) as mentioned in the year 2004, their numbers in 2004 compared with the numbers of 2003 between brackets.36

On Tort
published:
• Pure Economic Loss: Vernon Palmer (Tulane), Mauro Bussani (Trento)

announced:
• Strict Liability: Franz Werro (Freiburg Ch.), Vernon Palmer (Tulane)
• Complex Liability: P.G. Monateri (Torino)
just started or in progress:
• Environmental Liability and Ecological Damage
• Personal Injury Compensation
• Personality Rights
• Private Remedies in Competition Law

On Contract
published:
• Good Faith: Reinhard Zimmermann (Regensburg), Simon Whittaker (Oxford)
• Causa and Consideration/Enforceability: James Gordley (Berkeley)

announced:
• Mistake, Fraud, and Misrepresentation: Jacques Ghestin-Ruth Sefton Green (Paris I)
• Pre-Contractual Liability: John Cartwright (Oxford), Martijn Hesselink (Amsterdam)
just started or in progress:
• Unexpected Circumstances

On Property
announced:
• Security Rights in Movable Assets: Mathias Storme (Leuven), Eva-Maria Kieninger (Würzburg)
• Information as Property: Sjef van Erp (Maastricht)
• Property on the Environment: Barbara Pozzo (Milano)
just started or in progress
• Trust
• Time-limited Interest in Land
• Mortgages
• Boundaries to Information Property

Over the period of time the number of active participants fluctuates, because people have to withdraw due to other occupations or because people have been actively recruited in order to complete the picture.

5 About the Picture

It is a picture of a ‘map’ of European private law that is the intended outcome of the common core project. Under the heading Legal Cartography Mattei and Bussani

36 It might be of interest to list the small groups that failed to gather a proper amount of responses, or that failed to establish a questionnaire, such as the newly announced group Modern Securities Holding in 2003, which is no longer on the list of 2004. I hope to get access to the information in the near future.
describe this goal of the project: “Stating it in very simple terms, we are seeking to unearth the common core of the bulk of European private law, i.e., of what is already common, if anything, among the different legal systems of European Union member states. (...) Such a common core must be revealed in order to obtain at least the main lines of a reliable geographical map of the law of Europe.”

This map may serve the European legislators for future plans like a Common Frame of Reference or it may help the transnational lawyers to broaden their clientele, but its utilisation is not what the initiators think that the project should take responsibility for. They emphasise that the use of the map is ‘of no concern to the cartographers who are drafting it.'

The mapping project is inspired by the work of Rudolf Schlesinger (1909-1996), who published Formation of Contract: A study of the Common Core of Legal Systems. Schlesinger could avail himself of the legal training and experience in two different legal cultures. He was born in Germany. There he started his legal career as an in-house solicitor of a private bank and helped numerous fellow Jews liquidate their assets to transfer their property. In 1938, shortly after Kristallnacht, he escaped the country for the United States, the homeland of his father. He received a second law degree from the Columbia Law School and practised law for several years. From 1948 until his retirement, he taught comparative law at the Cornell Law School. It is Schlesinger’s common core methodology, known as the Cornell Project, with which the Trento Project complies.

In comparing existing legal systems the active participants of Trento do not hang onto the differences that are due to, and cultivated within, the independent, autonomous and separately developed legal systems. Instead they compare the very outcomes of the legal systems as applied to particular cases or problems: the legal rule that has emerged. In essence, or at the core, the right answers might not differentiate as much as the legal systems do.

Trento includes the refinements by Rodolfo Sacco to the common core methodology. Sacco had suggested dissecting the legal rule into formative elements that he named “legal formants”. The ruling or the operative rule is, after all, formed along many competing considerations, influences, experiences, skills, doctrinal insights, and interpretative practices. These competing legal formants are omnipresent, independent of whether the emphasis lies on statute law, case law or legal doctrine.

37 See http://www.jus.unitn.it/dsg/common-core/approach.html.
38 Id.
42 With the approval of Schlesinger see http://www.jus.unitn.it/dsg/common-core/meeting_10_project.html. Rodolfo Sacco (1991) Legal Formants: A dynamic Approach to Comparative Law. 39 American Journal of Comparative Law 1-34 (Part I); 343-401 (Part II). See also Kennedy, op. cit. note 40, p. 169-170
43 Id.
Subsequently, when the actual operative rule is described or evaluated within the legal context, it reveals its formants on that level as well. Last but not least, the actual legal rule may find formative elements that stem from the political, social, economic, or cultural context. The Trento Project therefore asks its active participants to distinguish three levels when they report on the questionnaires: the operative rule, the descriptive formants, and the metalegal formants.\(^44\)

After having described who the people are and how they are organised (see the paragraph About the Trento Project) and after having described what they are doing (see the paragraph About the picture) I will now turn to the question why they are doing what they do and describe some motives for participating in the scholarly projects on European Private Law in general. These motives are confined to those that have been expressed in the literature. To conclude this contribution I will list the outcomes of the project.

6. About the Motives

One of the motives of the participants of the Trento Project is to build a common culture. This motive is even laid down as a goal, second to legal cartography.\(^45\) What is intended is not a single hegemonic legal culture, but a culture of exchanging cultural differences and similarities in order to get acquainted with one others’ legal system and culture.\(^46\) From a sociological point of view this goal is very interesting as it points not only to a social network among private law experts, but also to important developments in legal education and to the changes of the research and study programmes of many Law Faculties and Schools in Europe. With this aim of building a common culture, the Trento Project claims a position alongside the European Casebook Project and the Students Exchange Programmes. Its focus, however, is solely on scholars and it takes the opportunity to emphasise its non-hegemonic approach: “The development of a common work methodology is in itself an educational enterprise to those who are participating in it. Hence, it may facilitate sophisticated technical communication among professional lawyers already formed in their own legal tradition rather than having as a target the creation of prospective common European lawyers. Besides, it focuses on all European legal systems, deemphasizing (…) the ones that are or could be considered leading or paradigmatic.”\(^47\)

Motives for legal scholars to participate in a project like the Trento project have been discussed by Wilhelmsson.\(^48\) He puts forward motives of ‘self-interest of legal

\(^44\) See the Appendix I- Instructions about How To Answer The Questionnaires on http://www.jus.unitn.it/dsg/common-core/approach.html#5.

\(^45\) See under Goals – Building a Common Culture on http://www.jus.unitn.it/dsg/common-core/approach.html

\(^46\) It is an interesting field of inquiry for legal anthropologists. I hope to be able to research this further in the near future.

\(^47\) Id., note 43.

scholarship’: It ‘strengthens the position of legal science within the academic
community as a whole’, and ‘improves its status within the legal community.’ Wilhelmsen
thinks in terms of the indispensability of legal scholarship in the
harmonisation projects. Hesselink, however, puts it in terms of political motives. Scholars “who specialise in European private law would gain power in comparison with
their colleagues who specialise in national private law.”

The motives that related to academic projects and legal doctrine may naturally
be complemented with those that stem from ‘euro-scepticism’ or ‘euro-optimism’, from right or left wing political thinking, or from rather common motives such as the
wish to visit lovely countries and nice cities. Since the Trento Project appears to be
somewhat aloof when it comes to taking a stand in the debates on Europe, one might
even come to the conclusion that it is indeed the lovely and welcoming meeting place of
Trento itself that is the real reason for giving such priority to the mapping of European
Private Law and the building of a common culture by bringing people to Northern Italy
each year.

7 About the Outcomes and the Literature

Six volumes have been published. Another four have been announced:

Contract Law. (Cambridge Studies in International and Comparative Law 'the Common
Core of European Private Law'.) Cambridge etc: Cambridge University Press

Law. (Cambridge Studies in International and Comparative Law 'the Common Core of
European Private Law'.) Cambridge etc: Cambridge University Press

(Cambridge Studies in International and Comparative Law 'the Common Core of
European Private Law'.) Cambridge etc: Cambridge University Press

in European Tort Law. (The Common Core of European Private Law: The Trento
Project.) Bern: Staempfli Publishers/Durham NC: Carolina Academic Press/Brussels:
Bruylant

49 Id., p. 83
50 Id., p. 84
51 Hesselink, op. cit., see note 17. Martijn Hesselink is law professor at the University of Amsterdam. He
participates in The Study Group, The Trento Project and the Social Justice Group from the groups that are
here listed in Table 1. Besides these three groups, he himself mentions also his participation in the Ius
Commune Casebook series, a project that is mentioned in note 14. See Id., p. 683 note 18.
52 Id., p. 682
53 This includes the motive to participate in the debate pro or against European civil codification. See for
and Developments. 21 Hastings International and Comparative Law Review 883-902
54 See for a review Hondius, Ewoud (2002) Good Faith in European Contract Law – A First Publication
of the Trento Common Core Project. 2002/3 European Review of Private Law 471-147
55 See for a review Nicola, Fernanda (2003) The Enforceability of Promises etc. 44 Harvard International
Law Review 597-605


*Volumes in progress*56

Pozzo, Barbara ed. *Property on Environment.*

Graziadei, Michele & Lionel Smith eds. *Trusts.*

Cartwright, John & Martijn Hesselink eds. *Pre-contractual Liability.*


Additionally, reports of the meetings, the publication of the presentations on the general meetings are:

*Reports*


*Speakers*


With the contributions of speakers from the first 5 plenary sessions of the General Meeting in Trento. (Ulrich Drobnig, Melvin A. Eisenberg, James R. Gordley, Arthur Hartkamp, Ewoud Hondius, Christian Joerges, Hein Kötz, Martin Shapiro) reprinted in 2002; Foreword Rodolfo Sacco


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56 See [http://www.jus.unitn.it/dsg/common-core/books.html](http://www.jus.unitn.it/dsg/common-core/books.html) (visited 2004-10-08). See also [http://www.jus.unitn.it/dsg/common-core/approach.html#5](http://www.jus.unitn.it/dsg/common-core/approach.html#5) (visited 2004-06-15), which included two titles, which have been removed:
- Information as property: (Sjef Van Erp, Maastricht); for the reason, see note 35
- Complex Liability: P.G. Monateri (Torino)