



MASTER OF
THE ROLLS

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Why a European Law Institute?

1. How will European law develop over the coming years of the 21st Century? This was a question posed by Professor Raoul van Caenegem in 2002. Considering that question he said this,

‘The answer to [this] crucial question is difficult to forecast, not only because it involves a good deal of crystal ball gazing . . . because different nations have traditionally approached this issue in different ways. Indeed, the age-old English instinct is to say, with Lord Denning, ‘trust the judges, for they are the true guardians of the law’. The German feeling, which also goes back several centuries, is to say, with Savigny, ‘trust the learned jurists, for they are the best guides through the thickets of the law’. The French instinct, on the other hand, is to say, in true Jacobin and Napoleonic vein, ‘trust the legislator and beware of judges and jurists who pervert the codes. As none of these traditions [and I add here the many other traditions across Europe] is the sole road to salvation, a truly European law ought to contain the most helpful elements of each one of them.’¹

In Professor van Caenegem’s observation lies the answer to the question, why a European Law Institute.

2. If we are to develop European law over the coming years so that it best serves the peoples of Europe, we are going to have to draw together the many different legal traditions from across Europe, and take the best from each. It is not sufficient for any one tradition – feeling or instinct – to frame and shape those developments. As they say in America, out of the many, one. That is as true of the development of European law.
3. Drawing together those different traditions is not however enough. To properly develop the law, we need to trust not simply judges, learned jurists and legislators. It is not enough to draw leading academics, or leading lawyers, judges or legislators. They each have their own perspectives, but it will be just that: their perspective as academics, lawyers and so on.

¹ R. van Caenegem, *European Law in the Past and the Future*, (CUP) (2002) at 134.

4. There are, of course, a plethora of academic institutions and networks which study and teach European law. There is little need for another. Equally there is a multitude of European judicial networks and associations and an equally great number of practitioners' networks and associations. They each have their own view: and the view that each takes – the view from here – is not necessarily, if perhaps ever, the view from there; as Professor van Caenegam's insight highlights. If the European Law Institute sought to be another such institution or network, no positive answer could be given to the question posed at the outset. It would be just one more body which examines European law from a particular, singular perspective. If it develops in that way it would provide no real benefit over and above the various institutes and other networks which already exist.
5. There is however a notable absence in Europe of an institution which, like the American Law Institute (the ALI), gathers together academics, judges and practitioners. As the ALI shows, law at its best is not academic law, lawyer's law or even judge's law. Law at its best is the product of a diversity of perspective. Only as such can legislative developments be academically robust, clearly and simply drafted, and, crucially, of practical utility. Only then can we ensure that law is a practical instrument which actually serves the citizen and society.
6. To ensure then that the law develops as best it can to meet the needs and aspirations of the people of Europe, a European Law Institute is needed; a body which can bring together the European legal traditions and the widest possible range of jurists – whether they be academics, lawyers, judges and legislators. It will however need to ensure that it does draw together representatives of each branch of the law, of each branch of the legal profession and each legal tradition within Europe. If it ensures this, as I am sure it will, it will avoid the pitfalls of drafting proposals which are of little practical utility or of dubious practical application; it will produce work of qualitatively higher level and utility than that which is being carried out at the more traditional institutes or associations.
7. It is frankly remarkable that it has taken until now for such an Institute to be created. But it has been created now, and the prospect it holds for improving the quality of law-making in Europe – in areas as diverse as civil procedure, which is much underdeveloped at the European level, as privacy and defamation, which calls for clear and reasoned analysis

drawing from all our traditions, to know and emerging challenges, such as those posed by the internet, by life lived sans frontiers – is to be embraced and nurtured.

8. Why a European Law Institute? Because as the development of law will benefit from it, so will we.

Lord Neuberger of Abbotsbury