

Europe in the globalization of law (summary)

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Europe was built as a community of States seeking economic prosperity. This community has evolved towards a community of values. It is now seeking an ever closer union among the peoples of Europe. In this process, the foundation of the European Law Institute is an important step. The Institute, based on diversity of legal traditions and disciplines, and cooperation among jurists from different vocational backgrounds can contribute to developing EU law and to building new bridges between Europe and Globalization.

The creation of the ELI testifies for the special place of Europe in the global world. Europe carries the main dynamics of Globalization. But Europe also tightens the links between the different cultures and traditions of the European countries and thus enhances their common inheritance.

I. Europe organizes the globalization of law

A.- The legal systems of the European Union and of the European Convention for the Protection of Human Rights organize the increasing interactions between internal and international legal rules.

1.- The principle of subsidiarity which organizes the legal systems of the EU and of the European Convention for the protection of human rights, as well as the preliminary ruling system in the EU, favour an in-depth dialogue between the different legal cultures in Europe.

2.- This dialogue is also founded on a method that helps organize the globalisation of law : both European courts try to conciliate the aims of the legal system they represent and the diversity of national legal cultures and traditions in Europe. The EU law also works towards a tighter convergence between the different legal systems of member States (eg Regulation on the law applicable to contractual obligations- Rome I). The ELI shall contribute to this method by suggesting new common rules.

B.- Europe enables a balanced dialogue between the European legal cultures and the globalized law.

1.- Europe is a vector of globalized law : it opens the national legal systems to free movement of goods, persons, services and capital. It also favours the application of the international treaties protecting fundamental rights and dealing with the environmental law.

2.- Europe is also a factor of balance between globalized law and the European legal cultures. Eg the principle of proportionality which creates a balance between trade law and other European values. The *Kadi* ruling is also a significant example of balance between the international legal order under the United Nations and the EU legal order.

II.- Europe contributes to bringing values and principles into the globalization of law.

The approach on which the ELI is based can be compared to the approach of the European Court of justice, which seeks the general principles of law in the constitutional traditions of Member States. The ELI can thus contribute to the process of European integration by creating new links between the national legal systems in Europe.

A.- Three legal concepts or principles can illustrate the relevance of this approach towards the creation of a European “jus commune”.

1.- The first example is the principle of proportionality. This principle, in various contexts (in criminal law, public law or civil law), has been applied for a long time in most legal systems in Europe. It is now commonly used by both European courts and, in return, is more and more commonly used by national courts, therefore revealing the emergence of commonly shared methods and values in Europe.

2.- The second example is the concept of services of general economic interest, which is now regarded as a shared value of the Union by article 14 of the Treaty on the functioning of the European Union. This notion, based on legal concepts which were already shared by many member states, reveals the existence of common European legal traditions.

3.- The third example which can testify the emergence of common European legal concepts (and of a common European law) is the law of public contracts. These contracts are now mainly ruled by European law. But the European law of public contracts itself takes its roots in the different European legal cultures.

B.- Europe reveals and enhances the foundations of a global community of values.

The globalized law doesn't lack values : some are considered universal –fundamental rights-, some are still emerging. In the globalized world, Europe is a bridge between, on the one hand, European states and people and, on the other hand, a global community of values. Europe gives these values a real content and a legal meaning.

1.- Europe deepens the fundamental rights protected by the international treaties. Eg the right to a fair trial in the European Convention for the protection of Human rights. The Charter of Fundamental Rights of the European Union also creates a bridge between the fundamental rights protected by the international treaties, the European Convention for the protection of human rights and the national constitutional and legal systems.

2.- Europe gives a real content and legal meaning to the new values emerging in the globalized law -environmental law, common goods-: eg high environment standards in the EU, water regarded as a heritage which must be protected, defended and treated as such.

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Europe is not independent of globalization. It is not a small village of indomitable Gauls still holding out from the invader. Europe is deeply rooted in globalization and plays a crucial role in it. To member states and the European people, Europe helps bring globalization into the heart of Europe. But Europe is not a simple pathway, nor a transparent piece of glass. Rather it is a filter, a buffer, that organizes globalization of law and gives it a meaning, a direction. This direction is founded on values and principles which progressively forge a common European law, a European Jus Commune, that might be a step towards a “public law of mankind” which, according to Emanuel Kant, “favours perpetual peace”. Yet this emerging European law is mainly the result of a community of States and of the action undertaken by European institutions. In order to create an “ever closer union among the peoples of Europe”, this Jus Commune must also be rooted in and founded on a cooperation among jurists from all European cultures and traditions and all vocational backgrounds : common law and continental law, penal and civil law, private and public law. The creation of the European Law Institute is a cornerstone of this construction. I welcome this initiative very much and warmly congratulate the founders of this Institute and I wish it a long and productive existence.