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# Training a European iurist: law faculties' curricula, the European Parliament resolution on the approximation of the civil and commercial law of the Member States 2001 and Bologna 1999

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# Training a European iurist: law faculties' curricula, the European Parliament resolution on the approximation of the civil and commercial law of the Member States 2001 and Bologna 1999[1]

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Two relevant official European documents have been passed in relation to the training of the jurist in Europe and the development of related professions: the Bologna 1999 Declaration and the European Parliament Resolution 2001, which should be co-ordinated. The first one created an incentive for the creation of comparable university curricula throughout Europe and the second one invited European law faculties to introduce European Private Law matters into their law curricula. In consequence, European law faculties now have the goal to train Pan-European private law iurists, through developing their skills and knowledge to allow them to work everywhere in Europe. This necessarily leads to the reform of paedagogical techniques and the alteration of the curricula, including the important contents of ius commune and iur communitatis.

**Keywords:** European iurist; law faculties curricula; European legal education; ius commune; ius communitatis; Bologna Declaration; European Parliament Resolution 2001; curricula harmonisation



## 1. Goal and introduction

Following the European Parliament Resolution on the approximation of the civil and commercial law of the Member States 2001 (EPR 2001),[2] law faculties were formally invited to introduce in their curricula European law topics on civil and commercial law.

At the same time, the Bologna Resolution 1999 included some objectives that are fully compatible with the EPR 2001 although difficulties may arise in its implementation.

Therefore, the goal of this paper is to point out and develop the three main ideas arising from the EPR 2001, their coexistence with the Bologna process and their common implications for law faculties' curricula. That is:

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(1) the convergence of the EPR 2001 with some of the Bologna Declaration principles within the creation of the Espacio Europeo de Educación Superior (EEES), the European Space for Higher Education;
(2) the invitation to European law faculties to train 'European private law iurists' and different ways to do so.
(3) Which problems need to be faced in order to achieve the second objective, which students' skills need to be developed and the necessity to adapt new pedagogic methodologies that allow the introduction of new subjects into the curricula without disrupting the general education of students.



In accordance with this goal, this paper will consider the following:

- Curricula and Bologna 1999 and EPR 2001
- What is a private law European iurist?
- Training a European iurist in private law
- Integrating European private law in European law faculties' curricula: an experience at University Rovira i Virgili
- Conclusions.

## 2. Curricula and Bologna 1999 and EPR 2001

On the one hand, the Bologna Declaration 1999[3] included some recommendations that could be interesting for law faculties in order to elaborate their curricula in future years:

- higher education and research systems should continuously adapt to changing needs, society's demands and advances in scientific knowledge;
- mobility: free movement for students, teachers, researchers and administrative staff;
- the necessary European dimensions in higher education leading to curricular development, inter-institutional cooperation, mobility schemes and integrated programmes of study, training and research.

On the other hand, the EPR 2001 traced a path to follow and achieve the harmonization of the European civil and commercial laws, which has been followed in a broad sense by different pan-European research groups devoted to different specialties of private law,[4] the initiative of the European Commission through different Framework Programmes[5] – that give its support to some of those groups – and other initiatives[6] and the continuous activity of EC institutions in legislative and jurisprudential fields in relation to private law issues. Therefore it can be said that the process of European private law harmonization is being undertaken through the following routes:

- the interest, implication and support of EC institutions;
- legal dispositions (different Directives on private law matters);
- doctrine, through pan-European research groups, most of them formed and/or created by university lecturers and researchers;
- decisions of the European Court of Justice;
- other informal ways of jurisdictions' approximation (i.e. direct comparative law).

While the deadline for the process to achieve a common frame of reference on contractual law is 2010, the EPR 2001 has added that:

> from 2005: measures to promote the dissemination of comparative analysis and common legal concepts and solutions in academic training and in the syllabuses of the legal profession, as well as promote dissemination of Community law to the same academic and legal circles.

Consequently, this was an invitation to law faculties to promote the introduction of European private law in their curricula and to broaden it, that is to say, to take it into account for both training and research purposes of law students. Together with the goals and interests of the Bologna process, this means that there is a serious effort to train European iurists in the field of private law at a European level and from two fronts: agreement of education ministers and the EC institutions (especially, Parliament and the Commission).

From my point of view this goal goes beyond EC Directives 89/48 and 98/05 which dealt with the mutual recognition of diplomas and the free establishment of lawyers all round Europe. 'Mutual recognized diplomas' are useless if they do not grant a minimum of pan-European legal knowledge of the student, especially in the private law field. This lack is directly related to the free establishment of lawyers: a lawyer in a Member State will find it difficult to act properly in another Member State if he does not have sufficient knowledge about the private law of the latter. His degree or postgraduate qualification should ensure a minimum acquired knowledge in pan-European private law rules and principles, which would help him to take the proper steps (i.e. examinations) to act in any legal profession anywhere in Europe. Moreover, the idea goes beyond the EC Erasmus Programme and related ones as well, as students would be more ready to learn in a comparative perspective and to move around Europe if they learn common European legal principles as they should have the knowledge to belong to a pan-European community of iurists. I'll comment this 'minimum pan-European private law principles effect' (common core of European private law) later.

In fact we can agree that currently law faculties have no right to 'condemn' their students to narrow their legal practice within any geographic limits if we believe in a true pan-European legal education and practice. In fact, following the EPR 2001 and Bologna 1999, faculties have an obligation to facilitate their students' integration as iurists anywhere in Europe, which

can be done in different ways but, from my point of view, the key idea is to know what should be taught to ensure the training in a common European legal tradition and principles.

Only if this is ensured, can the EC Treaty principle of 'free movement for workers' (Articles 48 and 52) be a reality in our field of knowledge. One turning point in this aspect was the European Court of Justice judgment in *Kraus* v. *Baden Württemberg* (31-3-1993) which stated that a postgraduate title issued in a EC Member State which is pretended to be used in another EC Member State falls within the scope of the EC law, and any restriction in its use contravenes Articles 48 and 52 of the EC Treaty. In fact, there have been many cases in different EC Member States in which the lack of knowledge of national private law has rendered void the actions of iurists from another Member State. This was, for example, the case under the Spanish DGRN[7] resolution of 7 February 2005[8] which decided that, among other reasons, the lack of enough knowledge of Spanish private law of a Germany notary is a ground to say that he is not in the same position as a Spanish notary to assess the parties in a land conveyancing process; so the deed he issued could not be recorded in the Spanish Land Register. Something similar happened in the decision of the German *Landgericht* Ellwangen/Jagst 26 November 1999,[9] which decided that the proper interpretation of the expression 'jeder Notar' at §925 Abs. 1 S. 2 BGB is that this only refers to 'German notaries',[10] which in the praxis meant that in a land conveyancing process only German notaries are allowed to take part. Both decisions were criticized by the 'pro-European' doctrine of both countries,[11] which stated that the proper interpretation should be the one which is according to the European harmonization process, that is, the substitution of the 'national notary' interpretation by the 'European notary'.

## 3. What is a private law European iurist?

In a broad sense the meaning should be 'every European citizen with a law degree', which obviously is too wide to be useful to identify law students trained in a 'pan-European way'. The Italian Decree 25 November 2005 says that it is 'the law graduate that develops activities in comparative, international and EU law', which is probably more accurate.

Professor Mantovani[12] helps to define such a iurist and says that he is one who:

- should know the fundamental rules of EU law, along with his own country's law;
- assumes the existence of a multiplicity of rules' origins, including the EU institutions;
- is conscious of the importance of international private law and judicial cooperation, if it is assumed that European private law is a pool of national jurisdictions linked through a disparate body of international

private rules (e.g. the Rome Convention 1980) and, in the field of execution, the rules for judicial cooperation (e.g. Regulation 805/2004/EC creating a European Enforcement Order for uncontested claims);
- knows how EU institutions work and assumes a culture linked to human rights.

If I may, I would add that a European private law iurist should have acquired the skills to easily adapt his legal practice to any European jurisdiction and should be conscious of a common body of rules that govern the day-by-day increasing EC law *acquis* and the common private law rules and principles that form the common core of every European national private law body of rules (even the common law ones).

## 4. Training a European iurist in private law

The tools to train such a European private law iurist through a pan-European private law training are the *ius communitatis* (EC law) and the *ius commune* principles. While the former shows the norms that have been passed to overcome the frontiers throughout Europe in the field of private law (i.e. consumer law) in current times (e.g. digital signatures and internet contracts) the latter gives a solid and centuries-proven ground to help in constructing a common European legal culture that cannot be forgotten (this constituent illustrates the works that deal with the role that Roman law and historic law should take in post-Bologna law degrees' curricula and even the research in those fields in explaining and searching our European 'common roots'). Both should be an important part of law faculties' curricula.[13]

Moreover, following the Resolution's proposal of the European Law Faculties Association (ELFA)[14] of February 2007: 'ELFA suggests that a specified part (up to a third) of each subject in a legal curriculum is devoted to the learning of common European legal principles […] This could strengthen the mutual trust among the faculties of law and further facilitate the recognition of degrees'. This is completely in line with the idea of the 'European iurist'.

However, after the introduction of ECTS (European Credit Transfer System) credits, dozens of law faculties would face an important problem related to the reduction of time devoted to law training at undergraduate level, while official postgraduate programmes would probably not be everywhere. As an example, any Spanish law faculty has currently (pre-Bologna degree reform) a curriculum for a law degree up to 345 credits[15] and the Bologna reform would convert these into 240 ECTS credits, which include not only lecturing hours but also hours for students' self-study, project developing, etc. This will for sure involve a reduction of effective lecturing hours which would probably have an impact in the number of taught lessons. To be more precise in relation to the example, in any Catalan university both Spanish civil

law and Catalan civil law are taught at the same time;[16] the inclusion of a third legal jurisdiction (the European one) would cause a dramatic reduction in the number of hours devoted to Catalan and Spanish civil laws.

The solution should come through a change in lecturing methodologies, which should be adapted to the new Bologna structure (undergraduate and Master's degree). Following the previous example, nowadays it is already nearly impossible to 'explain' fully through teaching lectures both legal civil law jurisdictions in a law degree (so quite often the solution is to choose according to which jurisdiction an institution should be taught instead of trying to explain both); a third one would be virtually impossible. And in a globalized world and law, it is increasingly more common to find the need to approach a new event not only from a national perspective but from an international one. As an example, the phenomenon of Islamic mortgages:[17] they are a global question throughout Europe and each national jurisdiction is trying to find how to structure them,[18] though European law is not fully developed in the field of mortgages yet.[19] The UK is the most advanced, and its solution (the use of equity, that is, the ownership as security) seems interesting for other countries, although several constraints may arise in some jurisdictions (i.e. problems with the *causa* in using an institution for a different end from the one for which it was intended). In any case, one can see here an international question, solved in comparative law and trying to use a similar solution using internal law with the principles inspiring international civil law (i.e. ownership is more secure than any security right).

Pursuant to the Bologna process every law faculty is obliged to specialize its teaching activity at postgraduate level, which means that the 'simple and straightforward' transfer of subjects from undergraduate level to postgraduate level is not possible because there would always be some topics that would fall outside the remit of the specialized Master's degree.[20] So neither at undergraduate nor at Master's level can such a massive amount of information be explained. Here the question arises of the current impossibility of trying to cover (know, study, research, etc.) all civil law-related subjects, which is true not only for Spain but also, I presume, for most countries in Europe due to fast-moving legislation, EC law, the increase of litigiousness and the rapid evolution of society.

So new methodological techniques are needed, which focus on law students' skills[21] rather than on their memorizing capabilities.[22] New private law European students should:

(1) know about the compendium of basic civil law concepts and principles (European private law common core). These principles should include those that are shared throughout Europe either because they come from our common roots (e.g. good faith, equal rights of parties under a contract, undue enrichment, freedom of contracting, private property, *prior in tempore*, *pari passu*, *pacta sunt servanda, rebus sic*

*stantibus*, etc.) or because they have been created by EC legislation or jurisprudence (e.g. mutual recognition, weak party under a contract). These should work as 'basic tools' to facilitate the student to operate as a iurist throughout Europe (like economists do when they talk about offer and demand, which can be understood anywhere; we do not even have this yet). Even those principles that reveal significant differences between European private law jurisdictions should be taken into consideration (i.e. how to transfer property and to create limited real rights, the role of the *causa* in contracts in each jurisdiction, the *pactum commissorium*). All this would help in the approximation of private law curricula around European law faculties;

(2) be able to find (intelligent searcher), understand and apply properly the rules. He needs to develop techniques of interpretation and integration (through legal literature, jurisprudence, law reports, etc.) and to know the plurality of intervening/relevant jurisdictions to a case (i.e. the rules of international private law, the ways that EC law is applied, etc.). As Dr Salomon says, being a iurist is to learn the 'legal language' (to understand, interpret and apply a legal text) that should help to achieve equity and justice;[23]

(3) have the abilities and tools to promote his own critical judgement (*in claris fit interpretatio*) and to be able to rank principles that might collide (e.g. private property vs social interest, consumers' protection vs *pacta sunt servanda*, right to redeem vs own act principle).

Apart from all the above, currently international/transnational law firms appreciate from their candidates their learning interests, team working skills, social integration, highly professional motivation, readiness for change, solid academic education, competence in English language and intellectual maturity and self-responsibility. All these skills should be taken into consideration when drafting new law curricula in order to develop the ways and subjects to promote their acquisition and, especially, in choosing the proper teaching methodology.

So for the above reasons (extensive range of private law subjects, European private law *acquis* to be taken into consideration, possible reduction in lecturing hours, the need to develop specific 'pan-European' and 'globalized' skills in law students) adaptation to the EPR 2001 and Bologna 1999 methodologies in law teaching should be taken into consideration for the benefit of our students. In consequence, active learning (folder with materials ready for students to prepare a future discussion), the case method (Harvard, 1870), seminars, clinical legal education (outdoor training and contact with reality), personal tuition and problem-based-learning (PBL)[24] together with the complement of a virtual campus (e.g. Moodle[25]): these Bologna-conforming methodologies may help to develop such skills and to try to give students the tools to conduct themselves as iurists throughout Europe.

## 5. Integrating European private law in European law faculties' curricula: an experience at University Rovira i Virgili

The response to the declaration from EPR 2001 has been different among European law faculties. Some of them have introduced specific doctorate or postgraduate programmes, others have introduced specific subjects in their undergraduate or postgraduate programmes and some others have simply tolerated the fact that some of their lecturers have introduced European private law in their already-existing subjects, without modifying their curricula. According to the Prague Resolution 2001,[26] curricula should be more flexible, with 'European content, orientation or organisation'. From more implications to fewer implications in introducing pan-European private law one can find:

(1) universities or institutes devoted to European law (i.e. Institut für Europäische Rechtswissenschaft, Universität Osnabrück; European University Institute, Florence);
(2) specific European private law postgraduate/doctorate programmes (offered by several universities in Europe; this solution sees European private law as a specialization for a student's curriculum);
(3) specific postgraduate or undergraduate subjects devoted to European private law (this is the case in my university, which is commented on below);
(4) the introduction of lessons in current subjects (ELFA's Resolution solution, see above);
(5) 'informal introductions' (quick comments that a particular institution or solution to a case has some degree of European private law content);
(6) institutions that simply ignore EPR 2001 and Prague 2001.

At University Rovira i Virgili (URV)[27] (a medium-sized public university, with ca. 14,000 students, of which about 350 study law, and created in 1992) its Law Faculty was granted an Official Postgraduate Programme on Corporate and Contractual Law (Official Master's Programme in Corporate and Contractual law),[28] which started in 2006–2007. It is a biannual programme with two constituent parts: the professional part and the research part. Because of the general vocation to train students in all aspects of corporate and contractual law the programme includes all different fields of law related to that topic, such as commercial law, tax law, civil law, international private law and procedural law.

However a subject of three ECTS credits is fully devoted to 'European patrimonial law' and until 2006 was also part of our doctoral students' curricula. It is divided into two parts:

(1) A general part: legal systems, which includes:

- current *acquis communitaire* and ways of European harmonization;
- current research in Europe: soft law vs European Civil Code;
- civil law and common law: building bridges.

(2) A special part: institutions, which includes the essentials of patrimonial law and the situation of its development in Europe:
- comparing civil law institutions (i.e. mortgage vs hypothec vs *Grundschuld*);
- common law institutions (contract, land law and trusts);
- European contractual law[29] (project);
- European law of torts[30] (project);
- the Eurohypothec[31] (project) and EULIS.[32]

As you may see, the contents of the subject are continuously changing. Therefore its teaching requires an important grade of updating of the lecturer, which is directly and necessarily linked to his research interests.

## 6. Conclusions

Three points may be made:

(1) The EPR 2001 suits Bologna and both invite law faculties to introduce European private law contents in their curricula.
(2) Having a second or even a third legal jurisdiction to teach (European law), with fewer lecturing hours, reveals the necessity of altering pedagogic methodologies to promote 'pan-European-ready' students' skills in private law.
(3) There are several ways and grades in introducing European private law at faculties' curricula but, at the end of the day, they cannot constrain the possibilities of a European law student in becoming a true European iurist.

## Notes

1. This paper was presented at the ELFA meeting Barcelona in February 2007.
2. COM(2001) 398 – C5-0471/2001 – 2001/2187(COS).
3. This Declaration and the ones that follow can be found in English at www.bologna-bergen2005.no/.
4. Some of them are the following: Study Group on a European Civil Code – Von Bar Group (www.sgecc.net/), European Group on Tort Law (http://civil.udg.es/tort/), Common Core – Trento Group (www.jus.unitn.it/dsg/common-core/), the Eurohypothec research group (www.eurohypothec.com) and the Acquis Group (www.acquis-group.org).
5. The Sixth Framework Programme provoked the creation of the Joint Network on European Private Law – EU Sixth Framework Programme 'Network of Excellence' (since May 2005), which joins the works on European civil law harmonization of eight research groups. Its main goal is to deliver a proposal

for the 'Common Frame of Reference' (CFR) for European contract law as described both in the Commission's Action Plan (COM [2003] 68 final) and the Commission's Communication on 'European Contract Law and the Revision of the Acquis: The Way Forward' (COM (2004) 651 final) of 11 October 2004. This Proposal will be delivered in the form of Principles. Now the Seventh Framework Programme has started (http://ec.europa.eu/research/fp7/).

6. See, for example, the important documents of the Commission in relation to the common frame of reference in European contractual law (Brussels 11 October 2004, COM(2004) 651 final) and two crucial recent Green Papers on the European mortgage market (Brussels, 19 July 2005, COM(2005) 327 final) and on revision of EC *acquis* on consumer law (Brussels 8 February 2007, COM(2006) 744 final).
7. The DGRN (Dirección General de los Registros y del Notariado) is an administrative body, a division of the Spanish Ministry of Justice, that solves those questions arising from the operating of Land Registers and the activity of notaries.
8. Spanish Official Journal (BOE) No. 82, 6 April 2005.
9. RIW 2001, 945 (Ls.).
10. This was an interpretation based on historical reasons.
11. See Heinz (2001) for the German one.
12. Mantovani (2006).
13. The same idea is defended, in relation to training European iurists, in Delgado, Oliver, and Salomón (2007).
14. See www.elfa-afde.org.
15. According to Spanish legislation (Royal Decree 1424/1990), 1 'Spanish credit' is equal to '10 lecturing hours'.
16. Since 2004 Catalonia has its own Civil Code, which is being drafted progressively.
17. Bouliff (2006, pp. 22–24).
18. As they have an important particularity when compared with the rest of mortgages: they cannot generate interest, as the Shariah (Islamic law) does not allow them.
19. See the project *The Eurohypothec: A Common Mortgage for Europe* at www.eurohypothec.com.
20. For the same idea together with the 'teaching hours' reduction' problem, see Rodríguez-Piñeiro (2004).
21. For skills in the English system see Bell (2005).
22. Although in many countries the access to several major legal professions (judges, barristers, notaries and even, university lecturers!) is only or mainly based on an ability to memorize.
23. Salomón (2006, p. 5).
24. For a complete explanation of those methodologies and their practical implementation, see Witker (1985, especially chap. 9).
25. http://moodle.org/. For an account of using online tools to help in research, teaching and university managing see Nasarre-Aznar (2006).
26. See the text at www.bologna-berlin2003.de/.
27. See www.urv.es; the Law Faculty webpage is www.fcj.urv.es.
28. www.mbl-urv.com.
29. See www.copecl.org and all related and integrated research groups.
30. View the project at http://civil.udg.es/tort/.
31. See the evolution of the creation of a common mortgage for Europe at www.eurohypothec.com.
32. See www.eulis.org.

## References

Bell, J. (2005), *Legal Education and Bologna: A British Perspective,* Graz: ELFA. www.elfa-afde. org/PDF/Conferences/Bell_Graz.doc.

Bouliff, M. (2006), 'Islamic Mortgages – European Growth Potential,' *Mortgage Finance Gazette,* European Supplement (Autumn), European Mortgage Federation. pp. 22–24.

Delgado García, A.M., Oliver Cuello, R., and Salomón Sancho, L. (2007), 'Los retos de la formación jurídica en el espacio europeo de educación superior,' Paper presented at Ier Congreso Internacional Virtual. Innovación educativa y retos de la docencia jurídica en el siglo XXI, January 2007, Mexico. www.themis.umich.mx/derecho/.

Heinz, V.G. (2001), 'Beurkundung von Erklärungen zur Auflassung deutscher Grundstücke durch bestellte Notare im Ausland,' RIW, 12/2001, p. 928.

Mantovani, D. (2006), 'El derecho romano después de Europa. La historia jurídica para la formación del jurista y ciudadano europeo,' *Revista General de Derecho Romano,* 6. www.iustel.com.

Nasarre-Aznar, S. (2006), 'La utilización de herramientas *on-line* para la promoción de la docencia, la investigación y la gestión en la universidad y el derecho: una experiencia 2003–2005 en la Universidad Rovira i Virgili,' in *Actas del I Seminario de Innovación Docente en Ciencias Jurídicas,* Universidad Rovira i Virgili. www.aula-futura.net.

Rodríguez-Piñeiro Royo, M.C. (2004), 'La irrupción de nuevos sectores: el derecho laboral,' in *La enseñanza del derecho en el siglo XX. Seminario en homenaje al profesor Mariano Peset,* ed. A. Mora, Madrid: Dykinson. www.uhu.es/dam/ddtss/la_ensenanza_del_derecho_del_trabajo_archivos/irrupcion_nuevos_sectores.pdf.

Salomón, L. (2006), 'La formación del jurista europeo en la sociedad del conocimiento,' *Revista de Universidad y Sociedad del conocimiento,* 3(1), 1–8.

Witker, J. (1985), *Técnicas de la enseñanza del derecho,* 4th edn, Mexico: Ed. Pac. SA.