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Editorial

Revealing Underlying Tensions: Contracts and Other Dialogues

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This issue is the first issue of the 25th volume of our Review. When looking at its contents, it is as if an invisible hand has guided our 'company of authors' to prove that private law is alive and kicking by throwing new light on long-standing questions relating to contracts, contracts being the most typical expression of private law in a literal sense. Their attention is spread in a balanced way as they tackle the pre-contractual stage (information duties, critically evaluated by Martien Schaub) the determination of the content of obligations (a study on the role of a principle of conformity in other contracts than sales, by Francisco de Elizalde), the effect of frustration and changed circumstances (a comparative analysis by G.C.W. Chung), and the fate of penalty clauses (comparative case notes on recent UK Supreme Court decisions, coordinated by Harriët Schelhaas). As de Elizalde writes, his contribution deals with the relationship between freedom of contract and reasonable expectations of the parties, and the same is true for these other articles. What they also show us is that the law is not necessarily developing always in the same direction: there is no axiom that state intervention in private law is always marching on. On the other hand, the law does intervene to a larger extent even in the most private relationships, such as between parents and children, as the contribution by José M. de Torres Perea illustrates. But inversely, the state needs more than before private contracts in order to fulfil its tasks, as some contributions to our next issues will illustrate.

Are young lawyers well prepared for the challenges of the legal profession(s) in our contemporary societies ? Sabino Cassese sees a lot of deficiencies in legal education in Europe and proposes five steps to overcome them. Arthur Dyevre elaborates possible remedies in greater detail. I'll leave it to the reader to judge whether these remedies are indeed completely lacking in our law schools, or whether they correspond to what is done already on many of them. I must say I see a lot of this already happening in the law schools in the Low Countries, and some of it since decades. The study of transnational institutions even seems to have become the main topic in legal education. On the other hand, it looks like the relationship between these transnational institutions and the local and national community and its law and customs has become one of the most pressing problems of our age. We're therefore happy to publish a contribution by Marc Loth on judicial dialogue between courts, especially between national and supranational courts. The lack of a sufficient dialogue between them may be one of the causes of the Brexit (whereby we have to understand that non-lawyers, as most citizens are, tend to mix up the European Court of Justice (ECJ) and the European Court of

Human Rights (ECtHR), as most of the legal irritants in the UK came from the latter but the voters nevertheless 'punished' the EU rather than Strasbourg). In the next issue, the president of the ECJ will explain how the ECJ tries to respond to this. Meanwhile, the Belgian Constitutional Court has joined the Courts mentioned in Loth's article by expressing for the first time the constitutional limits that cannot be exceeded when powers are exercised by supranational institutions: the political and constitutional basic structures and the core values of the national constitution (judgment 62/2016 of 28 April 2016).

Whether we're dealing with contract law, or with questions related to legal education and legal institutions implementing private law: revealing underlying tensions is a core value of our journal!

Matthias E. Storme
Co-editor in chief