European Review of Private Law 4-2020 [793–794]

Editorial

On Courts Disrupting or Minimizing Disruption and on Law Dealing with Technological Disruption

This issue is mainly devoted to two themes: the first is developed in 5 contributions under the heading 'judges in Utopia', dealing with the question whether the judiciary is transforming private law by settling political issues and how different national cultures evolve in this respect. Laura Burgers, Anna Van Duin and Chantal Mak give already an overview of the four other contributions in their introductory article on 'The transformative role of the judiciary in European private law'. They claim that courts are indeed called upon to settle sensitive political issues that are the topic of extensive national and transnational debates. In the next four articles, some of the authors make this claim clearly more radically than others, who still see an important role for democratic institutions. The debate is important and will not go away soon, which is a good reason to devote an important part of an issue to it. At the same time, national supreme or constitutional courts seem to be more protective of the political institutions partially set aside by such ideas. In the *New York Times* of July 7, 2020,[1] prof. Jonathan Adler (from Case Western Reserve school of law) explains how the American Chief Justice, John Roberts, is building up non-partisan authority by applying a methodology that could be called anti-utopian, namely judicial minimalism: 'seeking to resolve cases narrowly, hewing closely to precedent and preserving status quo expectations', and curing constitutional defects by narrow remedies, cutting down only what's strictly necessary, thus 'minimizing disruption' in the existing law, irrespective of whether this is ideologically conservative or liberal.

Apart from the question whether judges should be disruptive or not, the second main theme in this issue concerns topics where technology is disruptive and asks how the law should respond. In one of the contributions, Katarzyna Południak-Gierz discusses the impact of technology on the meaning and use of information duties in consumer contracts, and especially the remedies for lack of fulfilment of such duties. In another one, Pieter Wolters argues that further digitalization of activities, including the impact of search engines, leads to an increased importance of European law in comparison to national law. Several book reviews equally deal with the impact of digital technology on contract aw.

1 Jonathan Adler, 'This is the Real John Roberts', https://www.nytimes.com/2020/07/07/opinion/john-roberts-supreme-court.html.

As all good things come in threes, the issue also deals with class actions as a third topic, focusing on the Italian reform in a comparative perspective, especially with French law and European developments.

Keep safe and enjoy reading!

Matthias E. Storme
Co-editor in chief
Email: matthias.storme@telenet.be