

Table of Contents

<i>Table of Cases</i>	xi
<i>Table of Legislation</i>	xiii

Introduction	1
1.1 Nationalism	4
1.1.1 From Nationalism to Supranationalism.....	4
1.1.2 The Persistence of Nationalism.....	6
1.2 Private Law in Europe.....	8
1.2.1 The <i>Acquis Communautaire</i>	9
1.2.2 Plans for Further Europeanisation	10
1.3 Methodology	13
1.3.1 Descriptive Character	13
1.3.2 European Union as Multinational and Multi-level System.....	14
1.3.3 Considered Countries.....	16
1.4 Structure and Topics.....	17
I Nationalism	20
1.1 Approaching Nationalism	20
1.1.1 How Many Nationalisms are There?.....	21
1.1.2 Interpreting Nationalism.....	23
1.1.3 The Awakening of the Nation: Primordialism	25
1.1.4 The Invention of the Nation: Modernism.....	27
1.1.4.1 Techniques of Nation-building.....	29
1.1.4.2 Reasons for Nation-building.....	31
1.1.5 Primordialism vs Modernism?.....	32
1.2 Ideas of the Nation-state.....	34
1.2.1 The Political and the National Unit.....	35
1.2.2 Ethnic Nationalism	36
1.2.3 Civic Nationalism	38
1.2.4 From Civic Nationalism to Constitutional Patriotism.....	39
1.2.5 Cultural Nationalism	41
1.2.6 Is There a Good and a Bad Nationalism?.....	43
1.3 Why a State Should be National	45
1.3.1 Nationalism and Liberalism.....	46
1.3.2 Nation and Culture Coincide.....	48
1.3.3 Information.....	50
1.3.4 Democracy	52

1.3.5 Solidarity	54
1.3.6 Justice.....	57
1.3.7 Do Nation and Culture Coincide?	60
1.3.8 National versus Social Identities: Notes on Socialism	62
1.4 The Convenience of Nationalism.....	64
1.5 Conclusion.....	66
2 Nationalisation and Denationalisation	68
2.1 The Development of National Law.....	68
2.1.1 From a Common to a National Private Law	71
2.1.2 Between Civic, Cultural and Ethnic Nationalism: Germany.....	75
2.1.3 Civic.....	78
2.1.4 Cultural.....	81
2.1.4.1 Intellectual Background	83
2.1.4.2 The <i>Volksgeist</i> Theory	86
2.1.4.3 <i>Volksgeist</i> and Language.....	89
2.1.4.4 Diffusion of the <i>Volksgeist</i> Theory	91
2.1.4.5 ... In Europe	92
2.1.4.6 ... In the USA	95
2.1.5 From Cultural to Ethnic.....	98
2.1.6 Racist	100
2.1.7 Back to Culture	106
2.1.8 The Impact on Today's Legal Systems	108
2.2 Private Law as a Nation-building Tool	110
2.2.1 Homogenisation by Inclusion.....	112
2.2.2 Homogenisation by Exclusion	114
2.2.2.1 Constitutional Aspects.....	116
2.2.2.2 A Brief Digression: Non-discrimination in Europe	118
2.3 The Denationalisation of Private Law	121
2.3.1 Before and after the Wars: Faith and Distrust.....	122
2.3.2 Denationalisation and Renationalisation	125
3 Why Private Law Should be National	131
3.1 The Economic Argument	134
3.1.1. The Ideal Locus of Private Law in the European Context.....	135
3.1.1.1 Normative Implications of the Argument.....	135
3.1.1.2 The Challenging Nature of Distance Relationships.....	140
3.1.1.3 Democracy Issues	142
3.1.1.4 Heterogeneity of Preferences	145
3.1.1.5 The Decentralisation Theorem in Economics and Politics	147
3.1.1.6 Problematic Aspects for European Private Law.....	150
3.1.1.7 Geographical Proximity	151

3.1.1.8	A Slippery Slope to Balkanisation	153
3.1.2	The Argument in Light of Different Political Theories.....	155
3.1.2.1	Communitarian and Cosmopolitan Perspectives.....	155
3.1.2.2	Nationalist Perspective	157
3.1.2.3	Cultural Similarity and the Economic Argument	158
3.2	The Social Argument	161
3.2.1	Social Justice in the European Context	163
3.2.1.1	Normative Implications of the Argument.....	166
3.2.1.2	Absence of a European Model of Justice.....	167
3.2.1.3	Fundamental Rights, Justice and Harmonisation.....	168
3.2.1.4	The Stance of European Law	171
3.2.2	The Argument in Light of Different Political Theories.....	174
3.2.2.1	Communitarian Perspective.....	175
3.2.2.2	Nationalist Perspective	176
3.2.2.3	Fortune of Communitarian and Nationalist Conceptions	178
3.2.2.4	Cosmopolitan Perspective.....	179
3.3	The Cultural Argument	183
3.3.1	Culture as a Value	185
3.3.2	Interactions of Law and Culture	187
3.3.2.1	Transferability Thesis.....	189
3.3.2.2	Non-transferability Thesis	190
3.3.3	Law and Culture in the European Context	191
3.3.3.1	Normative Implications	192
3.3.3.2	Distinguishing Cultural and Technical Aspects	193
3.3.3.3	Inescapability of National Categories?	196
3.3.3.4	Future Convergence or Eternal Divergence?	197
3.3.4	Analysing Cultures.....	199
3.3.4.1	Legal Culture and Comparative Law	200
3.3.4.2	Cultural Classifications.....	201
3.3.4.3	Controversial Aspects of Cultural Classifications.....	203
3.3.4.4	Culture as Nation.....	204
3.3.4.5	Description as Explanation	207
3.3.4.6	Cultural Classifications in Historical Perspective.....	209
3.3.4.7	The Use of Cultural Classifications in Legal Studies.....	210
3.3.4.8	Conclusion	212
3.3.5	The Argument in Light of Different Political Theories.....	214
3.3.5.1	The Nationalist Perspective.....	215
3.3.5.2	Legal Culture as National Legal Culture	217
3.3.5.3	Cultural Homogeneity and the Legal Order	218
3.3.5.4	Concealing Ideological Distinctions.....	220
3.3.5.5	Non-nationalist Perspectives.....	222
3.3.5.6	Legal Significance of Multiple Identities	225

3.3.5.7 Multiple Identities and the Process of Europeanisation	226
3.3.6 Concluding Remarks	228
4 Euronationalism	229
4.1 The Idea of Europe	230
4.2 Reasons for Europe-building.....	234
4.3 The European Identity	236
4.3.1 Does a European Identity Exist?	240
4.3.2 Political Meaning of a European Identity	241
4.3.3 Constitutional Europatriotism.....	242
4.3.4 What are the European Values?.....	244
4.4 Law as a Europe-building Tool.....	247
4.4.1 Public Law	247
4.4.2 Private Law	249
4.4.2.1 Promoting Unity Through Civil Codifications.....	249
4.4.2.2 Promoting Values and Culture Through Material Private Law.....	254
4.4.2.3 Fundamental Rights and Social Justice	258
4.5 European Culture.....	260
4.6 Perspectives of Nation and Europe-building	264
Conclusion	268
<i>Bibliography</i>	277
<i>Index</i>	302