NEW PRIVATE LAW THEORY

New Private Law Theory opens a new pathway to private law theory through a plural approach. Such a theory needs a broad and stable foundation, which the authors have built through a canon of nearly seventy texts of reference. This book brings these texts from different disciplines into conversation with each other, grouping them around central questions of private law and at the same time integrating them with the legal doctrinal analysis of example cases. This book will be accessible to both experienced and early-career scholars working on private law.

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New Private Law Theory

A PLURALIST APPROACH

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A list of the main reference text, links to full text resources and English translations of all texts originally written in other languages can be found at: http://newprivatelawtheory.net

Preface

In our *New Private Law Theory* there is one feature that we want to stress specifically: it is a pluralist approach. This book approaches two challenges of private law theory today – in a highly globalized world and equally global discourse, in a setting where social sciences increasingly interact – and combines two answers to them.

First, it contains a survey on a large variety of theories and approaches across all the social sciences, including law, philosophy and beyond, behavioural sciences, psychology and so on. A large variety implies width in countries and traditions of thought on which we draw. A large variety also implies that we want to integrate as many insights as possible that might be relevant for legal thinking from all neighbouring disciplines. A large variety further implies that this aspiration is per se unattainable, and certainly so in one book and for three authors. This book can only constitute an attempt to set up a first map, to throw a stone into a pond, with a lot of *terra incognita* still to be discovered in response to this first approach. As such, this has to be a joint endeavour. To add as much objectivity as possible to a book that – with its limitations in authorship, in size, and as well in preconceptions of the authors – is bound to have a strongly subjective side as well, we chose one possible way of proceeding. With a view to bringing together the theoretical strands that matter for private law, we chose to start from those texts that – after long and broad discussions – we judged as seminal works for their discipline and discuss the discipline's main thought on particular problems via these texts, their contexts, their later developments and discussions. Moreover, we added landmark cases to illustrate the interplay between theoretical approaches, texts and legal problems. As a survey on a large variety of theories and approaches across all the social sciences and beyond, and in a considerable variety of countries worldwide, the book aims to break new ground indeed. It should have the capacity to serve as a basis for teaching, reading and thinking about a broadly conceived interdisciplinary theory of (private) law. Different from many other theories, it also tries to put theory into applied practice and run through vast territories of private law – again, of course, not all.

Second, while such a collection of the broad variety of approaches and theories may be interesting and helpful, in what respect does it constitute a new private law theory at all? What is new? Is it more than a mere collection of material? Is it a theory, and if so, what

kind of theory is it? The answer given in the book starts from what *law* is: a powerful ordering mechanism and stabilizer of society, perhaps even its 'social contract'. A theory of law, we think, has to reflect law. And not only for legal scholars and lawyers, but for society at large, there is at least one yardstick to which we adhere in societies based on the rule of law (and typically market economies), namely Western societies to which this book may speak in particular. This yardstick for legitimate order in society is made up of constitutions and democratically decided values, and not the individual predilection of the authors for approaches – from libertarian to communitarian and so on. Our new private law theory tries to take this yardstick seriously, tests its validity in the national and transnational arena and develops from this pluralist value basis a pluralist legal theory, establishing benchmarks and instruments to bring into the legal arena the ocean of knowledge that neighbouring disciplines have developed, but that requires to be linked to what constitutions say and what democracies decide in their established procedures. The *interplay between the ocean of knowledge and the constitution of the legal system*, its theoretical underpinnings as well as its systematization, in nation states and beyond nation states, is what distinguishes new private law theory and the theorizing of this interplay – under the shadow of constitution and democratically decided values – is the core of our book.

Such a book would not have been possible – in its overall dimensions as well as in single chapters – without discussion and input of many friends, colleagues and discussion partners. We name them in alphabetical order and without affiliations – even though a number, perhaps most, of them would certainly have deserved long and special sentences and specifications. We warmly thank Marietta Auer, Anna Beckers, Dorothee Bohle, Gert Brüggemeier, Youssef Cassis, Hugh Collins, Rónán Condon, Simon Deakin, Michael Denga, Klaas Eller, Antonina Engelbrekt-Bakardjieva, Fabrizio Esposito, Muriel Fabre-Magnan, Fernando Gómez Pomar, Philipp Hacker, Martijn Hesselink, Lorenz Kähler, Duncan Kennedy, Torsten Kindt, Andreas Leidinger, Pia Letto-Vanamo, Liam McHugh-Russell, Florian Möslein, Horatia Muir-Watt, Szymon Osmola, Przemyslaw Palka, Dennis Patterson, Giovanni Sartor, Mathias Siems, Eyal Zamir … and many classes of researchers at the European University Institute, Florence, and at Humboldt University, Berlin.

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