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Can the European Legal Tradition play a role of identity in a New Europe?

It seems nowadays that many Europeans reject the very idea of Europe; but in order to understand this rejection a prior question must be answered: what is Europe today? We are facing a crucial problem of identity and it would be appropriate to deep the question on the conceptual foundations of Europe.

As lawyers we can ask ourselves a more precise and legal question: can the European Legal Tradition, particularly in relation to the foundations of Private Law, represent an identity factor for an (old and) new Europe? Law has always been from/by/for the citizens (i.e. the ancient idea of *ius civile*), and in this sense the European Legal Tradition could be an identity factor for Europe. Maybe it is possible to consider the Tradition of Private Law as a general value identifying a new Europe: a tradition that can play a role as a building-block of the idea of Europe. In this perspective, the question comes down to: what is the real substance of the European Culture of Private Law?

There is a feature of European Legal Culture, which can even be considered an identifying feature, that Private Law is not only a body of knowledge, but also a rational science. The European Culture of Private Law embodied a wonderful attempt of rationalizing the world of human behaviour, and in this context jurists had complete freedom: when shaping the law, they were moving without boundaries set by religion and politics.

As we have to discover what the essential substance of a European Culture of Private Law is, we wonder if it is possible to draw up a catalogue of common legal ideas; and we find a positive answer to this question, so long as it contains a comprehensive catalogue of ideas unifying/harmonizing/merging the European Legal Culture. The minimum core of principles that composes this catalogue is made up by five fundamental ideas, which can be regarded as the pillars of European Private Law Tradition: subject/persona, ownership, obligation, contract and inheritance.

Persona, in ancient Latin, means mask, so you might evoke such a suggestion: only if someone plays a role on the ideal/virtual stage of the relevance of Law, he represents a subject in a legal sense and only in this case he emerges as a juridical subject. The second pillar is the idea of ownership: persona, the subject of the ownership, is entitled to use and to dispose entirely of the thing; in essence, the core of the idea of ownership – between ancient and modern Europe – is the juridical structure used to

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signify "I have". At its origin, the idea of ownership implies the existence of a personal space subject to the power of a lord: this lord is called dominus as he exercises his power within the domus.

Another considerable pillar of the European Legal Culture is the idea of obligation. Obligation evokes the relationship between duty and liability (the Tommaso dalla Massara Of Counsel, Milan Email: t.dallamassara@nctm.it ACROSS THE EUNIVERSE 7 conceptual difference in the German thinking between Schuld and Haftung), although the law of obligations at the origins concerned only with the question of liability: the debtor is conceived under a duty to perform, and the creditor as a party with the corresponding right to claim such a performance.

In connection with the idea of obligation (and, before, with the idea of person), we can consider now the general concept of contract. In the European Culture of the Private Law, the common core of the idea of contract is that people are free to agree on the terms of their contract; and the freedom of the parties plays a relevant role in the context of the idea of ownership, operating in this framework within the corresponding limits.

The free relationship between subject and ownership represents the conceptual assumption from which the right of every person to dispose mortis causa arises. In general, inheritance represents for European Legal Tradition the transfer of an individual's property to one or more dependants according to a formula set out in law.

What is Europe today? First of all Europe is a cultural notion, more than a geographical or legal one. Many factors have made Europe a unified culture by shaping its characters: without doubt cohesion was made possible, amongst other, by Greek philosophy, Christian ethics, Humanism, Italian Renaissance, French Enlightenment, German Idealism. If it is true that Europe is not understandable without Dante, Shakespeare, Voltaire et cetera, nobody can deny that the European Legal Tradition has also played a crucial role in shaping the idea of Europe.

The concept of Private Law is widespread throughout Europe as a whole: it is a creation of a European human spirit, an idea that demonstrated the humana ratio, as well as serving a function of meeting needs of society; accordingly, law must continuously evolve. This idea of Private Law is not present in other civilizations: thus it is an identity factor for old and new Europe; and we can see this identity in the core of European Private Law: subject/persona, ownership, obligation, contract and inheritance. These fundamental ideas form part of the basis European Culture and play a vital role in shaping its future.

The ancient roots of this common European legal culture are not a limitation on the growth of a future Europe: by understanding better our origins we can better envisage and shape our future with freedom and courage.

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