



# The Development of European Private Law in a Multilevel Legal Order (Ius Commune Europaeum)

*Esther van Schagen*

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## **The Development of European Private Law in a Multilevel Legal Order (Ius Commune Europaeum)**

Esther van Schagen

Using insights from multilevel governance and pluralism, this book provides an in-depth analysis of the development of European private law in the Dutch and German legal order. The book focuses on the question whether the coexistence of national and European state and non-state actors is detrimental or beneficial for the predictability, consistency, accessibility and responsiveness of European private law. On the one hand, the discourse on multilevel governance draws attention to the possibility that problems may arise if interdependent actors do not sufficiently interact. This may be the case in European private law, where national and European legislators and courts have become increasingly interdependent on one another in ensuring that European private law develops predictably, consistently, accessibly, and responsively. The book analyzes the development of European private law by national and European state actors through codifications, blanket clauses, soft laws and general principles in the light of interdependence. In addition, non-state actors have played an increasingly important role in developing binding rules in European private law. This development necessitates more interaction between actors, and more attention for the potentially binding effect of privately developed rules on third parties' rights. The book accordingly develops a normative framework to determine the extent to which private actors should be able to develop binding rules, based on principles of democracy, private autonomy, and concerns for hetero-determination. On the other hand, pluralism perspectives advocate the development of European private law at different levels and jurisdictions in the light of responsiveness, regulatory competition, and opportunities for mutual learning. The book explores whether these benefits have materialized in the development of European private law, drawing attention to failed and successful instances of regulatory competition and mutual learning, and resulting innovations. The book sketches new governance techniques that may help interdependent actors take into account one another's initiatives and benefit from each other's insights, although they may also entail hetero-determination. (Series: Ius Commune Europaeum, Vol. 144) [Subject: European Law, Private Law]

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