

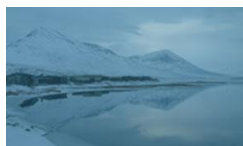
## **Gábor Hamza, *Le développement du droit privé européen. Le rôle de la tradition romaniste dans la formation du droit privé moderne* (Budapest : Biblioteca Iuridica of Eötvös Loránd University, 2005)**

by Nino Milazzo

1. As stated in the preface of his new volume, Gabor Hamza wishes to resume the scholarly journey commenced with his previous book, *Histoire et instituts du droit romain*, co-authored with András Földi. *Le développement du droit privé européen* aims at identifying and articulating the development of European private law from the perspective of Roman law. The book comprises four parts, each corresponding to a specific chapter. The first chapter deals with the origins of European law; the second one deals with the survival of Roman law in medieval and modern Europe; the third one deals with contemporary trends in jurisprudence based upon Roman law; the fourth and last one deals with traces of Romanist scholarship outside Europe.

Hamza begins by considering the inevitability of the legislative unification of European private law and the crucial role that Roman law could play in this direction: '*Le droit romain pourrait avoir un rôle important à remplir dans la jurisprudence européenne uniforme, du moins tendanciellement uniforme, et plus précisément dans la mise en place même de cette jurisprudence*' (8). Several European institutional projects have been progressing towards this goal, including the *Commission on European Contract Law*, presided by Ole Lando, whose specific objective is precisely the retrieval of the common principles of European contract law. Not to mention the many legal experts, often outright Romanists, who have been working on the creation of a European code on contract law (e.g. Peter Stein, Fritz Sturm e Theo Mayer — Maly).

2. The first chapter of the book addresses the legal developments following the year 476 C.E., which marks traditionally the fall of the Western Roman Empire. Therefore it examines the early Germanic legal sources, such as the *Lex Romana Visigothorum*, the *Lex Romana Burgundionum* and the *Edictum Theodorici*, up to the Justinian code. Subsequently, Hamza focuses his attention upon individual European states, and first of all upon Greece and Italy, showing how their national civil codes, instituted respectively in 1946 and 1942, are indebted to Roman law and the Romanist tradition. The chapter ends with an overview of *ius commune* and *ius canonicum*, so as to highlight once more how : '*le code du droit canonique ainsi élaboré a été publié par le pape Benoit XV en 1917. Dans la terminologie et dans le plan (système) se reflète fortement l'influence du droit romain*' (35).



3. The second chapter of the book, entitled *La survivance du droit romain en Europe*, analyses with great care the influence of the principles of Roman law on the legal development of various European countries. This is most evident as regards Spain and Portugal, whose legal framework manifestly reflects their common Roman heritage. More complex is the Anglo-Saxon experience and its *common law* tradition, which Hamza interprets as follows: '*signifie principalement le droit né de la pratique des cours royales anglaises*' (41). Its uniqueness notwithstanding, Hamza argues that Roman law has been influential in this context '*sur la jurisdiction de la chancellerie*' (42), especially in the areas of commercial and maritime law. As concerns the legal history of the Netherlands and Switzerland, Hamza notes that '*malgré le morcellement juridique, le droit romain n'était pas reçu*' (47) until the 1907 Swiss civil code, which reclaimed and amalgamated the French, Austrian and German ones. Hamza's gaze shifts then to Northern Europe, about which he highlights the equidistance from both the common law tradition and the Roman-Germanic tradition. Hamza remarks upon a common character uniting Denmark, Iceland, Norway, Sweden and Finland: '*En Europe du Nord, le droit romain n'était pas considéré comme ius commune, une réception semblable à celle de l'Allemagne n'a donc pas eu lieu*' (50). The influence of Roman law in the Nordic countries seems shallow and confined to particular legislations, such as the 1241 *loi du Jütland* of King Valdemar II of Denmark and the 1683 code of King Christian V of Denmark, which was applied in Norway as well. More significant appears to be the reception of Roman law in Finland, especially thanks to the academic teaching of comparative Roman law in Turku. Yet, the "infiltration" of Roman law has also contributed to achieving substantial harmonisation in private and commercial law in the Nordic countries, as epitomised by the Helsinki Agreement of 1962, whereby Denmark, Iceland, Norway, Sweden and Finland committed themselves towards the realisation of a common private law. After the Nordic countries, Hamza's book examines the Polish and Lithuanian cases, moving then to an articulate analysis of the Hungarian one. There, Roman law informs deeply and pervasively the existing legal framework. In connection with this, Hamza assesses the possible persistence of diverse Roman legal institutes, such as the *senatusconsultum macedonianum* and the *lex Falcidia*. Hamza's comprehensive assessment reaches its conclusion with an in-depth look at the modern trends in Hungarian law, the 1959 civil code, and the long line of 20<sup>th</sup>-century Romanists teaching and researching at Hungarian universities. Last in the chapter is the study of the Russian legal experience, which has been displaying a growing interest in the principles of Roman law after the collapse of Soviet Union.

4. The third chapter of the book tackles the development of European legal scholarship and the comparative study of ancient legal systems. Hamza explores an ample selection of schools of jurisprudence, such as, amongst others, the Humanist School, the *usus modernus pandectarum*, and the Natural Law School. This detour serves as the point of departure for an assessment of comparative law at large, based upon the interactions between Roman law and other ancient legal systems, which Hamza believes to be the key to comparative legal studies as such. If adopted, this approach would imply placing center stage Roman law, yet not in isolation, but in a mutually enriching relationship to Greek and ancient oriental law. This approach,

championed by Hamza in his new book, would thus further the efforts made decades ago in the same direction by Koschaker, who had already conceived of a *ius commune Europaeum*.

The third chapter ends with a brief survey of the 20<sup>th</sup>-century trends within Romanist scholarship, encompassing interpolationist research—still active during the first decades of the century—, papirology, and the main contemporary developments, about which Hamza states: *‘l’évolution ayant déjà dépassé depuis longtemps la dualité traditionnelle des méthodes historique et dogmatique’* (173).

5. The fourth and final chapter steps outside Europe and describes the influence of Roman law and the Romanist tradition *‘en dehors de l’Europe’* (175) The results of this research are rather intriguing. For example, Hamza shows how Roman law is still significantly influential in States such as Louisiana, due to the still standing 1870 civil code, Texas, Arizona, California and Nevada. In all these States noteworthy conjunctions with the *common law* tradition can be observed, as also visible in the Canadian Province of Quebec and its 1994 civil code: *‘le code civil du Québec garde en grande partie les traditions continentales européennes basées sur le droit romain, mais contient en même temps beaucoup d’éléments empruntés au common law’* (180).

Hamza retrieves important signs of Roman and Romanist influences in Latin America, southern Africa and Asia, especially in Japan and China. In the latter Asian country, Roman law has been playing an important role in private law scholarship since 1949, thus drawing attention to the rebirth of Romanist studies in eastern Asia. This rebirth is firmly emphasised by Hamza, who argues: *‘A partir de 1976, on constate un intérêt accru pour l’enseignement et la recherche scientifique du droit romain. Dans les Principes généraux du droit civil de la République Populaire de Chine, publiés en 1986 et entrés en vigueur en 1987, se reflète déjà le retour aux traditions du droit romain’* (186).

6. Hamza’s book constitutes an original scrutiny of the influences of Roman law and of its related legal experiences across the five continents, all of which are indebted to it, although to varying degrees. Besides, *Le développement du droit privé européen* deserves praise for highlighting how Roman law can facilitate the manifold processes of legal harmonisation currently taking place in Europe. In this manner, Hamza shows how Roman law is not an archaeological specimen from the distant past, but rather the common denominator of the *civil law* legal systems, and the source of concepts and methodologies still used today by legal scholars. In connection with this point Hamza recalls the commission funded by the European Commission and presided by Ole Lando, which has already delivered a novel normative corpus (*Principles of European Contract Law*) concerning contract non-performance and formation procedures, thus contributing to a common, Romanist-inspired contract law. This landmark unifying framework of European law has benefited from the input of several commissions (e.g. Lando, Gandolfi, Unidroit) and inspired the European Commission’s Communication of 19 May 2003, whereby was established a plan of

action for the achievement of a Europe-wide homogenous system of contract law. According to this plan, a *Common Frame of Reference* (CFR) will have to be written, which is to comprise technical terms, notions and principles. This CFR is nothing but some sort of European civil code, worked out by a number of study groups reunited under the *Network of Excellence*, which has already displayed a transparent reference to Roman law principles since in its very first drafts.

(English translation by Giorgio Baruchello)

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