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Principles of Latin American Contract Law : General Harmonization Rehearsals | Special Issue

Editorial
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EDITORIAL

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When I first became aware of the Latin American debate over the possible harmonization of the law of contract, my thought and curiosity went to the parallel concern on the same subject that has engaged European scholars and Institutions since the '80 of the past century, leading to several output of 'Soft Law'. In fact, as recalled by Carlos Pizarro Wilson in his introduction to the Brescia Conference, the *Principios Latinoamericanos de Derecho de los Contratos* (PLDC), *Principles of Latin American Contract Law* (PLACL) in the English version, were conceived within a lively exchange of opinions involving not only Latin American scholars, but French jurists as well. Within this background, in 2018 my idea was to reintroduce and enlarge the dialogue among scholars from the two continents. The questions I was looking for an answer, concerned in particular the reasons why such a keen interest towards harmonization was engaging jurists of different legal and geographical systems, and what principles and rules were taken into accounts by this first version of the Principles, as compared with the European several drafts on harmonized principles of contract law. Although at present the PLACL represent the first output in the 'market of the (soft) rules' in Latin America, I was (and I am still) aware that they do not exhaust the possible panorama neither of the debate nor of the existence of working groups dealing with the harmonization of the law of obligations. Therefore, I consider the issue of global harmonization of patrimonial law as still open.

This Special Issue of *Opinio Juris in Comparatione* entitled "*Principles of Latin American Contract Law: General Harmonization Rehearsals*" is the outcome of these collective thoughts and reflections. It consists of the collection of some of the contributions to the discussion that engaged European and Latin American scholars, and that took place in Brescia on July 17th, 2018. A special acknowledgement is therefore dedicated to the scholars that made a further effort to this debate through their written contributions.

The work and methodologies of the PLACL, as well as its goals and range of application are initially introduced by Carlos Pizarro Wilson. Reiner Schulze's paper discusses the pioneering role and the contents of the Principles of contract law in comparison with

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the European harmonizing sets of rules, arguing that they can help Latin American jurists to transcend the supranational level by making their mark on international tendencies. By defining the PLACL as 'derecho scientifico', or Soft Law that can be selected by the parties to a contract as applicable law, the contribution of Pietro Sirena again proposes some thoughts on the role of the PLACL on the debate concerning the harmonization of international law through a transnational code. Such reflections also face the question of the possible extension of PLACL to consumer contracts. Moving to the very contents of the PLACL: the French comparative point of view adopted by Yves-Marie Laithier provides some insights on principles (freedom of contract, good faith) and rules (the existence of vitiating factors, the general requirement of a cause, the judicial character of annulment or the distinction between 'absolute nullity' and 'relative nullity'), highlighting analogies and differencies with the recent French reform of the law of obligations. The issue of the requirement of the '*causa*' as an essential element of the contract in addressed by Beatriz Gregoraci in a critical perspective, that not only moves from the Spanish debate over the '*causa*', but it takes into account the European soft law and the French choices in eliminating this traditional essential feature of continental tradition. Alfredo Ferrante's contribution rests on the renewed remedial system, stressing the enlargement of contractual liability and its objective meaning, as well as highlighting some limits (as the hidden hierarchy of remedies) or even inconsistencies (as the introduction of the right to cure, or *Nachfrist,* not directly related to the roman tradition). José Annichiarico Villagrán analyses the issue of the limits in awarding damages (such as foreseeable and direct damages), with a particular and comparative attention to the question of the duty to mitigate damages attributed to the creditor in the PLACL. A critical analysis is finally devoted by Alberto Venturelli to the controversial issue of the anticipatory breach: the Author stresses the absence of this remedy in the PLACL, notwithstanding the comparative history of the anticipatory breach that, from the nineteenth century to the European case law, through the Vienna Convention, has been introduced into the European soft law.