

Colloquies on European Civil Procedure

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*Exploring the ELI-UNIDROIT Model European Rules
of Civil Procedure*

Edited by

Marco de Benito



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Preface

This book presents a series of colloquies between lawyers.¹

Dialogue represents the primary communicative vehicle for thought. As social animals,² reflection on any topic inherently entails dialogue with others.³ We humans *talk* with each other about things. An *ego-alter-object* triad is arguably our most profound epistemological structure.⁴

Since Antiquity, the increasing complexity of human knowledge has made writing the preferred format for communicating ideas. Nevertheless, the publication of any new work in any given field represents a further contribution to the ongoing dialogue. It is also evident that oral dialogue has never been superseded, even in the most formalised and esoteric disciplines.

Like philosophy, ethics, or politics, we *talk* and we *write* about law. Oral dialogue has historically constituted the principal vehicle for the expression and reflection on legal studies. In our classrooms and conference halls, we still emulate the model of Irnerius, who gathered a small group of students to explore together the recently rediscovered Digest.⁵ Similarly, jurists have used a variety of literary forms: consultations, glosses, commentaries, summaries, questions and answers, dissertations, monographs, treatises, handbooks, encyclopaedias, lexicons, journal articles, blogs.⁶

The aim of this book is to contribute to the ongoing debate on European civil procedure in the form of a written dialogue. One of the most ancient and enduring forms of literary expression, written dialogue is particularly suited to capturing and reflecting the inherently dialogical structure of the

1 The word 'colloquy' (derived from the plural 'colloquies') comes from Latin *colloquium*, also *conloquium* ('conversation'), from *com-* ('together, with') + *loquor* ('speak').

2 ἐπειδὴ φύσει πολιτικὸν ὁ ἄνθρωπος ('since man is by nature a political thing': ARISTOTLE, *Nicomachean Ethics*, 1097b), a 'political animal': ὁ ἄνθρωπος φύσει πολιτικὸν ζῷον ('man is by nature a political animal', ARISTOTLE, *Politics* 1, 2, 1253a2).

3 The word 'dialogue' comes from Latin *dialogus*, from Greek διάλογος ('conversation, dialogue'), from δια- ('across, between') + λέγω ('to speak'). The misconception that it can only mean 'conversation between two persons' is due to the confusion of δια- and δι- ('two').

4 See MOSCOVICI, S., *La psychanalyse, son image et son public*, Paris: Presses Universitaires de France, 1976.

5 See WAUTERS, B., DE BENITO, M., *The History of Law in Europe*, Cheltenham: Edward Elgar, 2017, pp. 50–57.

6 See WAUTERS, B., DE BENITO, M., *The History of Law in Europe*, Cheltenham: Edward Elgar, 2017, pp. 52–57, 94.

intellect. Since the time of Plato and his Socratic dialogues, this genre has demonstrated its capacity to express, structure, and convey complex ideas in an effective manner.

This book is inspired by a series of discussions that took place between 2020 and 2024. It should be noted, though, that this is far from a transcript. Those discussions provided only the initial material with which to create something completely new. For example, some of the chapters contain conversations that never took place, and some of the participants in one chapter actually discussed several topics with authors of another chapter. In sum, this book contains the freest literary exercise, completely detached from what may have been said in any oral conversation. *We wrote as if we were talking* because we enjoy discussing legal matters and thought it would be interesting to share our ideas with others in a conversational style. This is what the written dialogue genre is all about. This format allows us to convey the feeling of a real conversation, a polyphony⁷ in two, three, four, or five voices that flows naturally and perhaps even rhythmically.

It would have been inconsistent with the fundamental premise of the book to present comprehensive, systematic accounts of each topic. The discourse is deliberately fragmented, moving fluidly from one idea to the next to reflect an authentic intersubjective exchange (and maybe even a post-modern scepticism of systematicity)⁸. Nevertheless, we have tried to arrange the sequence of topics in a rational way, with each section having a kind of invisible theme that the attentive reader will easily notice.

A text of this nature can only serve to complement more conventional and scientific methodologies (of which all of us are *guilty* in one way or another). It is our intention, therefore, to present the reader with a modest but possibly fruitful instrument for navigating the largely uncharted waters of European civil procedure.

7 See ВАХТИН, М. М., Проблемы поэтики Достоевского, Moscow: Khudozhestvennaya, 1963; in English, *Problems of Dostoevsky's Poetics* (edited and translated by EMERSON, C.), Minneapolis: University of Minnesota Press, 1984; ВАХТИН, М. М., Вопросы литературы и эстетики, Moscow: Khudozhestvennaya, 1975; in English, *The Dialogic Imagination. Four Essays* (edited by HOLQUIST, M., translated by EMERSON, C., HOLQUIST, M.), Austin: University of Texas Press, 1981.

8 See, e.g., BLANCHOT, M., *L'Entretien infini*, Paris: Gallimard, 1969; in English, *The Infinite Conversation* (translated by HANSON, S.), Minneapolis: University of Minnesota Press, 1993.

Acknowledgments

I take full responsibility for the idea, direction, and coordination of this book. I am also responsible for the first draft and final editing of all chapters, and therefore for any errors. However, this is by its very nature a truly collaborative work. It is a great privilege for me to have had the opportunity to work with scholars and practitioners of such calibre in the production of each chapter.

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¹ Professor Stürner does not assert authorship of the work, but rather acknowledges the excellent editorial reformulation and restructuring of several of his contributions to various academic forums and the inclusion of references in this volume.