ABSTRACT

‘Europe-Building through Private Law: Individual Interests, Judicial Deliberations and the Common Good’

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To what extent can and should private law contribute to the shaping of a European 'common good'? A deconstructive analysis of CJEU case law that 'constitutionalises' European private law values shows that this process of constitutionalisation obscures the tension between diverging European economic goals and national social policies. A (re)constructive approach may better explain and give normative guidance for the development of rules of private law on the interface of EU and national laws. The current institutional framework provides several alternatives for pursuing a deliberation of value choices in this field. Most of these require judicial deliberation of economic and social values pursued through private law in the multi-level European constitutional order. A coherent deliberative judicial practice necessitates the elaboration of a normative theory of adjudication for European private law. This theory should in any case address the balancing of private interests and public goods and the balancing of goals of EU law and national private laws.