SHOULD CONTRACT LAW CONVERGE IN EUROPE?

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ABSTRACT

Since the publication in 2001 of the European Commission’s consultation document Communication on European Contract Law, there has been a wide-ranging debate about whether contract law should converge in Europe. The debate raises important philosophical questions, which are often run together in the academic literature. In this paper I attempt to disentangle some of these threads. They include the value of national sovereignty, the legitimacy of the EU’s harmonization programme, and the role played by considerations of fairness, efficacy and justice. I argue that the European Commission’s argument that convergence would promote cross-border trade is inadequate to the task of establishing the legitimacy of the project, and that a better foundation may rest in the right of European citizens to equal treatment. I conclude, however, that the case for convergence is far from clear, and that there are compelling reasons to doubt that convergence is desirable or indeed even possible.