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Editorial

Let's Appropriate and Cross-Fertilize

In his famous book *Legal Transplants* (1974), Alan Watson concluded that transplanting of legal rules or parts of a legal system is extremely common and in fact the most fertile source of development. He added *inter alia* that at least voluntary transplants always involve in change in the law and further that:

> law like technology is very much the fruit of human experience. Just as very few people have thought of the wheel, yet once invented its advantages can be seen and the wheel be used by many, so important rules are invented by a few people or nations, and once invented their value can readily be appreciated, and the rules themselves adopted for the needs of many nations.

In our Journal, nearly every article we publish implies borrowing not only from one's own legal system but cross-border from other jurisdictions.

Lawyers practice since many centuries what the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions preaches: '*to develop and promote the free exchange and circulation of ideas, cultural expressions and cultural activities*'.

Moreover, it is rather evident that legal rules and concepts fall in the 'public domain' and the rights of the author are exhausted as soon as the idea becomes part of the law. Legal rules are non-rival goods, i.e., their use in no way impedes the use of the same rules by another jurisdiction, institution, or culture.

But just when you thought you had seen everything already, activists now warn us that it is no longer allowed to appropriate cultural expressions from another tradition or culture: we are consistently guilty of cultural appropriation! At the University of Ottawa, free yoga classes were cancelled because non-Indians practicing yoga would amount to identity theft. Many similar incidents have been reported in recent years, where people have been accused of theft because of the way they dress, sing or dance, pray, cook, or even try to heal.

For some decades now, critical schools have tried to convince us first that national identity does not exist in law and that every identity is based on a mixture and later on that legal cultures are so self-referential that they are irreducible and untranslatable, and now some want us to believe that borrowing from other traditions is a crime. Let the dogs bark, our caravan moves on. We as a Journal will continue to foster cultural exchange and borrowing between different legal traditions and continue to believe that they are, to a certain extent, understandable in translation, without denying that differences may be deeply

rooted in history. Several articles in this issue deal with questions where deeply felt differences rooted in history play a role, as in the law on forced heirship or the law on champerty, both studied in this issue. Others study new phenomena spreading cross-border as payment platforms. Or deal with ever-changing age-old questions as regulation of health and lifestyles through nudging. Or deal more explicitly with legal transplants and their effects, as illustrated for Latin American contract law.

Let me also welcome our new co-editor in chief André Janssen and thank Ewoud Hondius for the twenty-three years that he took care of our Journal in an excellent way!

Matthias E. Storme
Co-editor in Chief