

Common Interests in Private Law.

A Reflection on the Leading Narrative of Private Law

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Private law is commonly understood as the field of law, where the coordination of individual interests takes place among free and equal individuals. This description does not mention common interests, that is to say interests, which cannot be ascribed to a single person or a limited group of persons. And yet, common interests form an integral part of private law. However, the role common interests play in private law is subject of an ongoing discussion. This is where the analysis comes in: it describes and explains the role of common interests in private law from a theoretical and dogmatic perspective.

Part I examines the debate in private law that is held about the importance of common interests and the disciplinary self-image. It is shown that a leading narrative is perceptible, which passes on a liberal-individualistic understanding of private law and rejects the consideration of common interests as foreign to private law. The leading narrative is powerful, although legal history studies have weakened it and alternative understandings of private law are advocated, which allow more consideration of common interests. The analysis traces the legal and extra-legal explanations for the longevity of the leading narrative. It shows which discursive mechanisms and which peculiarities of the field and habitus of private law have contributed to the passing on of the leading narrative.

Part II analyses from a dogmatic point of view, how common interests find their way into the private law in force. In doing so, selected common interests serve as reference material: the common interests in environmental protection, the promotion of infrastructure and non-discrimination. Private law legislation and jurisprudence with reference to the respective common interests are sorted and classified according to the effects of the common interests on the coordination of interests performed. Based on the classification, further observations are made on the relationship of common interests to similarly positioned individual interests, the role of the legislature and the judiciary in their processing, the methods used to take them into account and the practical significance of the laws and decisions. Moreover, the existence of common interest consideration in private law is put into relation to the leading narrative. It follows from the examination that the consideration of common interests is now broadly anchored in private law, particularly in growing areas such as private environmental law and non-discrimination law.

Part III draws conclusions from the dogmatic analysis in Part II for the leading narrative in private law: an understanding of private law that integrates the role of common interests paints a more realistic picture than the leading narrative. The analysis of private law legislation and jurisprudence with references to common interests also gives rise to question exaggerations in the depiction of the law. Finally, a reflection on the leading narrative is a means to becoming aware of the incompletely theorized assumptions of one's own understanding of private law without having to give this understanding up.