

Some Fundamental Jurisdictional Conceptions as Applied in Judgment Conventions

It looks like Ralf Michaels (Duke University) has been busy recently! As well as his “EU Law as Private International Law” article, Ralf Michaels has also posted **“Some Fundamental Jurisdictional Conceptions as Applied in Judgment Conventions”** on SSRN. The abstract states:

The law of jurisdiction and of the recognition and enforcement of foreign judgments is confused. So is the debate about it. Basic concepts, even that of jurisdiction, have ambiguous meaning. Misunderstandings, most prominent in the failure to conclude a worldwide judgments convention at the Hague, are the consequence. This article tries to bring conceptual clarity to the field through an analysis of concepts and relations. The article first shows that jurisdiction as a requirement for the rendering of a decision (direct jurisdiction) and jurisdiction as a requirement for the decision’s enforceability elsewhere (indirect jurisdiction), are logically independent from each other. It goes on to show that the three possible values of deontic logic – obligatory, optional, and impermissible conduct – are reflected in three possible statuses that jurisdictional bases can have: such bases may be required, excluded, or permitted. A combination of both distinctions leads to nine different possible combinations of direct and indirect jurisdiction. The article analyzes each of these nine in detail.

Such an analysis is crucial for the drafting of judgment conventions. Traditionally, a distinction existed between so-called single conventions that regulate only enforcement of foreign judgments, and double conventions that regulate also direct jurisdiction. Arthur von Mehren, for whose memorial volume this article is written, developed a third category, the so-called mixed convention. Although it represented a considerable improvement, the exact structure of mixed convention never became fully clear. This article proposes a new typology that is both richer and more exact.

Although the article draws on rich comparative material from existing conventions, and although it emphasizes repeatedly the normative implications both of different values for jurisdictional bases and of different types of

conventions, the article's prime aim is analytical, not normative. However, far from being a mere formalist exercise, such an analysis lays the indispensable prerequisites for a proper normative analysis. The definition of clear concepts does not guarantee proper policy debates, but without clear concepts policy debate is impossible. In this sense, the paper hopes to help provide new foundations for such debates.

The article can be downloaded in full from [here](#).