

EU Law as Private International Law? The Country-of-Origin Principle and Vested Rights Theory

Ralf Michaels (*Duke University*) has an interesting article forthcoming in the *Journal of Private International Law*, "**EU Law as Private International Law? Re-Conceptualising the Country-of-Origin Principle as Vested Rights Theory**". Here's the abstract:

One of the most pertinent issues in contemporary European conflict of laws is the tension between Community law and traditional choice of law rules. The biggest problem comes not from the transposition of member state rules on choice of law into methodologically comparable EC Regulations, but rather from the so-called country-of-origin principle. This principle holds, broadly, that EU member states may not impose obligations on a provider of goods and services that go beyond the obligations imposed by the provider's home state. Originally conceived mainly with public law obligations in mind, the principle has an impact on choice of law insofar as it bars member states from applying their own law to the provider's conduct, even if they have the closest connections to this conduct.

The exact relationship between the so called country of origin principle, and private international law, has long puzzled scholars and courts. Yet attempts at explanation and reconciliation have so far been unsuccessful because they started from an inappropriately narrow understanding of private international law. Integrating comparative legal history, this paper proposes a broader understanding of private international law beyond the current post-Savignyan approach. Thus broader approach makes it possible to recognize how the country of origin principle is remarkably similar to an almost forgotten and universally rejected private international law approach - the vested rights theory. The article demonstrates the parallels between the country of origin principle and US, English, French and German historical versions theories of vested rights.

This insight presents an interesting challenge. The vested rights theory is now universally rejected because the criticism brought forward against it was and is felt to be irrefutable. One might think the same criticism would be able to bring the country of origin principle down, too. Indeed, the article shows how current criticism of the country of origin principle replicates to a large degree earlier criticism made against the vested rights theory. Remarkably, however, it shows also that the country of origin principle can refute the criticism.

The return of vested rights, and its regained ability to overcome seemingly irrefutable criticism, hold a broader lesson. The rise and fall (and rebirth) of private international law approaches depends less on abstract considerations and more on general ideas and ideologies of the times - in this case, economic liberalism.

Highly recommended.