

Party Autonomy in the Private International Law of Contracts

Giesela Ruehl (Max Planck Institute for Comparative and Private International Law) has posted *Party Autonomy in the Private International Law of Contracts: Transatlantic Convergence and Economic Efficiency* on SSRN. Here's the abstract:

It is commonly acknowledged that during the 20th century American and European choice-of-law theory have drifted apart: in the United States the American conflicts revolution swept the traditional vested rights theory out of the courts and the classrooms and gave way to a variety of novel approaches. In Europe, in contrast, legal systems decided to adhere to the classical concept of choice of law invented by Carl Friedrich von Savigny. However, the 20th century has not only seen transatlantic divergence. Almost unnoticed, American and European choice of law theory has developed into the same direction in one area of law: contract law. Both the Restatement (Second) of Conflict of Laws, which today is the most widely followed conflicts regime for contracts in the United States, and the EC Convention on the Law Applicable to Contractual Obligations (Rome Convention), which establishes uniform conflicts rules for virtually all of Western Europe, provide for free party choice of law.

This article looks at principle of party autonomy in Europe and the United States in more detail. It demonstrates that the trend of convergence extends beyond basic conceptual similarities and that it reaches business reality through the jurisprudence of American and European courts. However, the article does not confine the discussion of party autonomy to a comparative analysis. It also determines the underlying reasons for the convergence of American and European law by looking at the field from an economic perspective. Two basic questions are addressed: first, what is the economic rationale for granting free party choice of law? Second, can limitations of the free party choice of law such as the infringement of public policy, the evasion of mandatory law or the lack of a substantial relationship with the chosen law be justified on economic grounds? In answering these questions the article ventures the hypothesis that the trend of convergence in choice of law can be explained with the help of economic theory.

Full citation: Rühl, Giesela, "Party Autonomy in the Private International Law of Contracts: Transatlantic Convergence and Economic Efficiency" in CONFLICT OF LAWS IN A GLOBALIZED WORLD, Eckart Gottschalk, Ralf Michaels, Giesela Rühl & Jan von Hein, eds., Cambridge University Press