

The Making of European Private Law: Regulation and Governance Design

Horatia Muir-Watt (*Université Paris I Panthéon-Sorbonne*) and Fabrizio Cafaggi (*European University Institute - Department of Law*) have posted an interesting article on SSRN, entitled "**The Making of European Private Law: Regulation and Governance Design**". Here's the abstract:

*The current debate on the desirability and modes of formation of EPL ("EPL") is engaging a wide number of scholars and institutions. Current work concerns the search for a common core of EPL, the rationalisation of the *acquis communautaire*, the design of a European Civil Code. These ongoing projects raise at least two related questions concerning the challenges to Europeanisation of private law: First, what is the often implicit definition of private law standing behind the debate about the creation of EPL? Second, does the process of creation of EPL need some type of governance structure?*

In this paper, we thus intend to contribute to a better understanding of these two dimensions of the debate. First, we wish to highlight the internal transformation of private law and its increasing regulatory function to be considered in governance design. If we take into consideration the internal transformation of private law and its increasing regulatory function in addition to the role of private law in regulated sectors, we witness several phenomena that require consideration in the governance design, such as the change of private law sources, and the procedural nature of Europeanisation.

Within this framework it is important to identify the interplay between EPL and private international law. The role of private international law ("PIL") as a vehicle to ensure choice of rules for private parties might change quite considerably depending on the choices concerning private law rules, in particular whether there is harmonisation and which kind of private law rules are adopted. The role of PIL may also depend on the level at which rules are produced.

Second, we address the issue of the appropriate governance structure. In other

words, does EPL need a governance structure that will accompany its formation, consolidation and changes? More on the point, Is there a link between the governance design and the definition of EPL?

You can download the full article from [here](#).