

Article on the Economic Analysis of Choice of Law Clauses

Stefan Voigt (Marburg) has written an interesting article titled “**Are International Merchants Stupid? Their Choice of Law Sheds Doubt on the Legal Origin Theory**” which has been published originally in the *Journal of Empirical Legal Studies*, March 2008, Vol. 5, Issue 1 and has been posted on SSRN.

The abstract reads as follows:

In economics, there is currently an important discussion on the role of legal origins or legal families. Some economists claim that legal origins play a crucial role even today. Usually, they distinguish between Common Law, French, Scandinavian and German legal origin. When these legal origins are compared, countries belonging to the Common Law tradition regularly come out best (with regard to many different dimensions) and countries belonging to the French legal origin worst.

In international transactions, contracting parties can choose the substantive law according to which they want to structure their transactions. In this paper, this choice is interpreted as revealed preference for a specific legal regime. It is argued that the superiority-of-common-law view can be translated into the hypothesis that sophisticated and utility-maximizing actors would rationally choose a substantive law based on the Common Law tradition such as English or US American law. Although exact statistics are not readily available, the evidence from cases that end up with international arbitration courts (such as the International Court of Arbitration run by the International Chamber of Commerce in Paris) demonstrates that this is not the case. This evidence sheds, hence, some doubt on the superiority-of-the-common-law view.

The article can be downloaded from SSRN as well as from Blackwell Synergy (with subscription).

(Many thanks to Prof. Dr. Jan von Hein (Trier) for the tip-off!)