

Kinsch on PIL in Totalitarian States

Patrick Kinsch (University of Luxembourg) has posted Private International Law in Totalitarian States on SSRN.

The study of the private international law of three now-defunct totalitarian, quasi-totalitarian or post-totalitarian European regimes (Fascist Italy, National Socialist Germany and the Soviet Union) shows that the political orientation of these societies had an influence even on private international law. The racial and eugenic laws of National Socialist Germany contained provisions on their international efficiency, and the spirit of the racial laws was perceptible in much of the private international law cases involving Jews. There were some incidences of the Nazi Maßnahmenstaat in Germany; an emphasis on reciprocity and the possibility of retortion in the Soviet Union; in both states a redefinition of the substantive content of public policy; and much rhetoric. All in all though, it is the survival of the techniques of private international law in these states that is striking. These techniques were not abolished, nor did they end up being replaced, in any one of the regimes, by systematic application of the lex fori, by conflict rules using as connecting factors völkisch or racial characteristics in Nazi Germany, or more simply by arbitrariness. The civilising value of private international law could not be totally suppressed, even in totalitarian states.

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