M. E. Burge on Party Autonomy and Legal Culture

Mark Edwin Burge, Associate Professor of Law, Texas A&M University School of Law, has published a highly interesting article on the relationship between party autonomy and legal culture, providing new insights on the success (or failure) of legal transplants in choice of law: "Too Clever by Half: Reflections on Perception, Legitimacy, and Choice of Law Under Revised Article 1 of the Uniform Commercial Code", 6 *William & Mary Business Law Review* 357 (2015).

The abstract reads as follows:

"The overwhelmingly successful 2001 rewrite of Article 1 of the Uniform Commercial Code was accompanied by an overwhelming failure: proposed section 1-301 on contractual choice of law. As originally sent to the states, section 1-301 would have allowed non-consumer parties to a contract to select a governing law that bore no relation to their transaction. Proponents justifiably contended that such autonomy was consistent with emerging international norms and with the nature of contracts creating voluntary private obligations. Despite such arguments, the original version of section 1-301 was resoundingly rejected, gaining zero adoptions by the states before its withdrawal in 2008. This Article contends that this political failure within the simultaneous overall success of Revised Article 1 was due in significant part to proposed section 1-301 invoking a negative visceral reaction from its American audience. This reaction occurred not because of state or national parochialism, but because the concept of unbounded choice of law violated cultural symbols and myths about the nature of law. The American social and legal culture aspires to the ideal that 'no one is above the law' and the related ideal of maintaining 'a government of laws, and not of men.' Proposed section 1-301 transgressed those ideals by taking something labeled as 'law' and turning on its head the expected norm of general applicability. Future proponents of law reform arising from internationalization would do well to consider the role of symbolic ideals in their targeted jurisdictions. While proposed section 1-301 made much practical sense, it failed in part because it did not—to an American audience—make sense in theory."

The full article is available here.