# Procedural Science at the Crossroads of Different Generations: a New Book published in the MPI Luxembourg Book Series

Barely one month after the publication of the third volume of the MPI collection of Studies another volume has been released, edited by Prof. Loïc Cadiet (Université Paris I, IAPL), and Prof. Burkhard Hess and Marta Requejo Isidro (MPI).

The book is one of the outcomes of first Post-doctoral Summer School in procedural law, which was held in July 2014 at the Max Planck Institute Luxembourg under the auspices of the International Association of Procedural Law and the Max Planck Institute itself. It reflects both the philosophy of the School and the contents of its first edition. As stated in the Foreword, "modern procedural law is characterized by its opening to comparative and international perspectives", and "the opening of procedural science also requires a new approach of research which has to be based on comparative methodology". The common will of the IAPL and the Max Planck Institute for Procedural Law to support modern research in procedural law, backing particularly young researchers, led to the School one year ago, and achieves another goal with this volume.

The book collects most of the papers which were presented by the students in July 2014, after having been reworked in the light of the discussions of last summer and the advice of the attending professors. Many different areas of procedural law, ranging from regulatory approaches to procedural law, to comparative procedural law, arbitration and ADR, as well as the Europeanisation of civil procedure, are addressed. In this way the treatise demonstrates the current trends of scientific research in procedural law and the specific approach of an incoming generation of researchers.

The contributions of the professors to the School are also to be found in the book. They constitute a kind of homage to an academic work or an author considered as a milestone in the development of procedural and comparative procedural law. In this way also former generations of proceduralists joined the meeting of the different generations: thus the title of the book.

As one of the editors I would like to thank all the authors, and to encourage other young researchers to apply to the next edition of the IAPL-MPI Summer School, July next year.

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Rechtslage – James Goldschmidt 1925 Proceedings As a Sequence of Judicial Situations – A Critique of the Procedural Doctrine;  PROF. DR. EDUARDO OTEIZA, Linn Hammergren. Envisioning Reform. Improving Judicial Performance in Latin America; PROF. DR. MARTA REQUEJO ISIDRO, Francisco Beceña González; PROF. DR. DRES. H.C. ROLF STÜRNER, Einführung in die Rechtsvergleichung – Konrad Zweigert und Hein Kötz 3. Auflage 1996. Comparative Civil Procedure and Comparative Legal Thought .

For further information click here.

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# Save the Date: German-speaking young scholars' conference on "Politics and Private International Law" in April 2017

*The following announcement has been kindly provided by Dr. Susanne L. Gössl, LL.M., University of Bonn:*

"As a group of doctoral and post-doctoral students with a keen interest in private international law (PIL), we are trying to improve the exchange between young scholars in this field. To further this aim, we have undertaken to organize a conference for all German-speaking young scholars (i.e. doctoral and post-doctoral students) with an interest in private international law.

PIL is understood broadly, including international jurisdiction and procedure, ADR, uniform and comparative law, as long as there is a connection to cross-border relationships.

The conference – which we hope to develop into a recurring event – will take place at the University of Bonn on 6 and 7 April 2017. It will be dedicated to the topic

*Politics and Private International Law*

*– German title: Politik und Internationales Privatrecht –*

Choice-of-law rules established in continental Europe have since Savigny traditionally been regarded as 'neutral' as they only coordinate the law applicable in substance. However, the second half of the last century was marked by a realisation that choice-of-law rules may themselves promote or prevent certain substantial results. In the US, this has led to a partial abolishment of the classic understanding of the conflict of laws, and to its replacement by an analysis of the particular governmental interests concerned. Other legal systems have also seen traditional choice-of-law rules changed or limited by governmental or other political interests. The conference is dedicated to discussing the different aspects of this interplay between private international law and politics as well as their merits and demerits.

We welcome contributions which focus on classic political elements of private international law, such as *lois de police*, *ordre public* or substantial provisions within choice-of-law systems, but also comparisons to methodical alternatives to PIL or contributions discussing more subtle political influences on seemingly neutral choice-of-law rules. Examples range from the ever increasing influence of the European Union over national or international political agendas to questions of 'regulatory competition' (which may be relevant in establishing a national forum for litigation or arbitration) or other regulatory issues (such as the regulation of the allegedly international internet). By the same token, international family law and questions of succession are constantly increasing in relevance, the current growth of international migration making it a particularly important field for governmental regulation.

We are glad to announce that Professor Dagmar Coester-Waltjen (University of Göttingen) has accepted our invitation to inaugurate our conference on 6 April 2017. The afternoon will be dedicated to academic discourse and discussion and conclude with a dinner. The conference will continue on 7 April. We plan to publish all papers presented in a conference volume.

We intend to accommodate 6 to 10 papers in the conference programme, each of which will be presented for half an hour, with some additional room for discussion. We will publish a Call for Papers in early 2016 but invite everyone

interested to note down the conference date already and consider their potential contributions to the conference topic (in German language).

For further information please visit https://www.jura.uni-bonn.de/institut-fuer-deutsches-europaeisches-und-internationales-familienrecht/ipr-tagung/.

Questions may be directed at Dr. Susanne L. Gössl, LL.M. (sgoessl(at)uni-bonn.de)."

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# "RIW Fachkonferenz" on Private Enforcement of Competition Law and the Regulation 2014/104/EU at Frankfurt am Main on 26 November 2015

Matthias Weller is Professor for Civil Law, Civil Procedure and Private International Law at the EBS University for Economics and Law Wiesbaden and Director of the EBS Law School Research Center for Transnational Commercial Dispute Resolution (www.ebs.edu/tcdr).

The enforcement of competition law by means of civil proceedings is becoming more and more important. The European legislator recently has tried to incentivize private enforcement actions by enacting Regulation 2014/104/EU which harmonizes the law of the Member States with respect to cartel damage claims. Courts all around Europe deal with private enforcement claims. In May this year, for the first time the CJEU has dealt with central issues on international jurisdiction according to the Brussels I-Regulation in the CDC-proceedings. As a consequence, this area of law is shifting into the focus of both competition law and civil procedure experts.

Taking this development into account, the German Legal Journal “Recht der Internationalen Wirtschaft” (“RIW”) hosts a conference (conference language: German) that takes a closer look at the current trends in private enforcement of competition law:

**Welcome speech**

*Dr. Roland Abele,* RIW

**Introduction to the subject**

*Prof. Dr. Matthias Weller, Mag.rer.publ., EBS Law School, Wiesbaden*

**Legal framework of the Private Enforcement Regulation 2014/104/EU**

*Prof. Dr. Heike Schweitzer, LL.M. (Yale), Freie Universität Berlin*

**International civil procedural law and the CDC-case of the CJEU**

*Prof. Dr. Matthias Weller, Mag.rer.publ.*, EBS Law School Wiesbaden

**Presumption of loss**

*Prof. Dr. Stefan Thomas, University of Tübingen*

**Relationship between joint and several debtors**

*Prof. Dr. Friedemann Kainer, University of Mannheim*

**Private Enforcement from the appeal instance**

Rechtsanwalt beim Bundesgerichtshof *Dr. Thomas Winter, Karlsruhe*

**Discussion Panel with experts from legal practice**

*Chair:* Rechtsanwalt *Dr. Georg Weidenbach, M.Jur. (Oxford)*, Latham & Watkins, Frankfurt

We would like to cordially invite you to join our discussion! Detailed information about the conference can be accessed here.

# Third Issue of 2015's Rivista di diritto internazionale privato e processuale

*(I am grateful to Prof. Francesca Villata – University of Milan – for the following presentation of the latest issue of the RDIPP)*

The third issue of 2015 of the Rivista di diritto internazionale privato e processuale (RDIPP, published by CEDAM) was just released. It features one article and two comments.

In his article *Reiner Hausmann*, Professor at the University of Konstanz, examines general issues of private international law in a European Union perspective addressing, *i.a.*, connecting factors and the questions of characterization and interpretation, in **"Le questioni generali nel diritto internazionale privato europeo"** (General Issues in European Private International Law; in Italian).

> *This article tackles general issues in European private international law, and namely issues of connecting factors, characterization and renvoi, to portray, on the one hand, how and in which direction this area of the law has emancipated from the domestic legal systems of the EU Member States and to illustrate, on the other hand, which are the underlying principles that encouraged and made this transformation possible. As far as connecting factors are concerned, the paper shows that the recent development in European private international law – as opposed to the solution in force in many Member States – is characterized by (i) an extension of party autonomy to family and succession law; (ii) a systematic substitution of nationality with habitual residence as the primary objective connecting factor in international family and succession law, and (iii) the promotion of lex fori as objective and subjective connecting factor, in particular in cross-border divorce and succession law. Therefore, the primary objective of the European legislation in the field of private international law is not to identify the closest factual connecting element of a case to the law of a*

*certain country but, rather, to accelerate and improve the legal protection of European citizens and to reduce the costs in cross-border disputes by allowing parties and courts to opt for the lex fori and thus to avoid, to a large extent, the application of foreign law. Moreover, the paper illustrates that while the introduction of renvoi into European private international law by means of Article 34 of the Regulation on cross-border successions appears to be in conflict with the principle of unity of the succession, which is a main pillar of the Regulation itself, the practical importance of renvoi is limited, because renvoi is mainly restricted to cases where the deceased had his last habitual residence in a third State and left property in a Member State. As suggested in the paper, in order to avoid difficult problems of characterization when marriage ends by the death of one of the spouses, it would appear sensible to follow the example of Article 34 of the Succession Regulation in the forthcoming EU regulation on matrimonial property.*

In addition to the foregoing, the following comments are also featured:

*Arianna Vettorel*, Research fellow at the University of Padua, discusses recent developments in international surrogacy in **"International Surrogacy Arrangements: Recent Developments and Ongoing Problems"** (in English).

*This article analyses problems occurring in cross-border surrogacy, with a particular focus on problems associated with the recognition of the civil status of children legally born abroad through this procreative technique. The legal parentage between the child and his or her intended parents is indeed usually not recognized in States that do not permit surrogacy because of public policy considerations. This issue has been recently addressed by the European Court of Human Rights on the basis of Article 8 of the ECHR and in light of the child's best interests. Following these judgments, however, some questions are still open.*

*Cinzia Peraro*, PhD candidate at the University of Verona, tackles the issues stemming from the *kafalah* in cross-border settings in **"Il riconoscimento degli effetti della kafalah: una questione non ancora risolta"** (Recognition of the Effects of the *Kafalah*: A Live Issue; in Italian).

*The issue of recognition in the Italian legal system of kafalah, the instrument*

*used in Islamic countries to take care of abandoned children or children living in poverty, has been addressed by the Italian courts in relation to the right of family reunification and adoption. The aim of this paper is to analyse judgment No 226 of the Juvenile Court of Brescia, which in 2013 rejected a request to adopt a Moroccan child, made by Italian spouses, on the grounds that the Islamic means of protection of children is incompatible with the Italian rules. The judges followed judgment No 21108 of the Italian Supreme Court, issued that same year. However, the ratification of the 1996 Hague Convention on parental responsibility and measures to protect minors, which specifically mentions kafalah as one of the instruments for the protection of minors, may involve an adjustment of our legislation. A bill submitted to the Italian Parliament in June 2014 was going in this direction, defining kafalah as "custody or legal assistance of a child". However, in light of the delicate question of compatibility between the Italian legal system and kafalah, the Senate decided to meditate further on how to implement kafalah in Italian law. Therefore, all rules on the implementation of kafalah have been separated from ratification of the Hague Convention and have been included in a new bill.*

Indexes and archives of RDIPP since its establishment (1965) are available on the website of the Rivista di diritto internazionale privato e processuale. This issue is available for download on the publisher's website.

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# Save the date: Conference European civil procedure Rotterdam and MPI 25-26 February 2016

On **25 and 26 February 2016** a conference on the theme "***From common rules to best practices in European Civil Procedure***" will be held at Erasmus University Rotterdam. The conference is organised jointly by Erasmus School of

Law in Rotterdam (Prof. Xandra Kramer, Alina Ontanu and Monique Hazelhorst) and the Max Planck Institute for European, International and Regulatory Procedural Law in Luxembourg (Prof. Burkhard Hess). The conference will bring together experts in the field of civil procedure and private international law from the European Union and beyond. It seeks to facilitate in-depth discussion and sharing of knowledge, practical experiences, and solutions, with the aim of reinforcing mutual trust and contributing to the further development of European civil procedure.

In the past fifteen years a considerable harmonisation of civil procedure has been achieved in the EU with the aim of furthering judicial cooperation. In recent years, the focus has shifted from minimum standards and harmonised rules to the actual implementation, application, and operationalisation of the rule. Important constituents in this discourse are the interaction between European civil procedure and national law, e-Justice, ADR, and best practices in civil procedure. The conference will focus on how to move beyond common rules and towards best practices that give body to mutual trust and judicial cooperation, which can in turn feed the further development of the European civil procedure framework from the bottom up.

**The conference will host four panels:**
Panel 1: The need for common standards of EU civil procedure and how to identify them: do we need harmonisation to achieve harmonious cooperation?
Panel 2: Procedural innovation and e-justice: how can innovative mechanisms for dispute resolution contribute to cooperation in the field of civil justice?
Panel 3: How can alternative mechanisms for dispute resolution contribute to judicial cooperation and what is needed to ensure effective access and enforcement in cross-border cases?
Panel 4: How can the best practices of legal professionals with judicial cooperation be operationalised to improve mutual trust?

Many distinguished specialists (academics, practitioners and policy makers) have confirmed their participation. All those interested in civil procedure, EU law and judicial cooperation are cordially invited to attend.

***The program as well as a link for the registration will be posted on this website soon!***

# European Parliament: Legislative Resolution on the Amendment of the Small Claims Regulation

It has not yet been noted on this blog that the European Parliament, on 7 October 2015, adopted at first reading a legislative resolution on the proposal for a regulation amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure. The resolution as well as the position of the European Parliament can be downloaded here.

Further information is available here.

Thanks to Edina Márton for the tip-off.

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# Save the date: Conference on the Succession Regulation on 19 November 2015

The European Commission and the Council of the Notariats of the European Union will host a joint conference on the Succession Regulation. The event will take place in Brussels (Belgium) on 19 November 2015 and aims to provide an opportunity for legal professionals to exchange their views and share their experiences regarding the application of the Regulation.

For further information please visit the conference website.

Thanks to Edina Márton for the tip-off.

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# Anuario Español de Derecho Internacional Privado (New Volume)

Volume XIV-XV of the Spanish journal Anuario Español de Derecho Internacional Privado, *AEDIPr,* devoted to international civil procedural law and private international law, is about to be released. It contains the following sections:

*Estudios,* in Spanish with a summary in English. This volume includes studies authored by B. Hess, M. Requejo Isidro, L. D'Avout, M. Pertegás Sender, F. Ferrari, J. Álvarez Rubio, A. Dutta, R. Arenas Garcia, P. Jiménez Blanco, A. Espiniella Menéndez, R. Miquel Sala, and D.B. Furnish.

*Varia:* short papers by young researchers.

*Foros Internacionales,* informing and commenting on the latest developments at international fora such as the UE or The Hague Conference, as well as regionally with a particular regard to Latin America.

*Textos Legales,* both international and Spanish: a very welcome section in light of the seemingly endless activity of the Spanish lawmaker in 2014 and 2015.

*Jurisprudencia:* the *Anuario* must be described as the best *recueil* of PIL Spanish case law; decisions on inter-regional conflict of laws are included, as well as the administrative decisions from the *Dirección General de los Registros y el Notario* relating to cross-border cases.

*Materiales de la Práctica:* reports related to PIL from several institutions like the Consejo General del Poder Judicial.

*Bibliografía:* a thorough review of Spanish books and papers on PIL published in

the last two years, as well as a selection of foreign literature.

You can access the whole ToC here: AEDIPr 2014-2015.

The journal is edited by *Iprolex* and distributed by *Marcial Pons*.

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# Public hearing on the Reform of the Brussels IIa Regulation

On 12 October 2015, the Committee on Legal Affairs of the European Parliament held a public hearing on the reform of the Brussels IIa Regulation. A video of the hearing is available here.

Further information on the public hearing, including the programme and the written contributions can be downloaded here.

Thanks to Edina Márton for the tip-off.

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# Out now: RabelsZ, Vol. 79 No 4 (2015)

The new issue of "Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law" (RabelsZ) has just been released. It contains the following articles:

**Giesela Rühl** and **Jan von Hein**, *Towards a European Code on Private*

*International Law?*

> *One of the most important dates in the history of European Private International Law is 2 October 1997. On that day the Member States of the European Union signed the Treaty of Amsterdam – and endowed the European legislature with near to full competences in the field of Private International Law. What followed was a firework of legislative actions leading to the adoption of no less than 15 Regulations on various aspects of choice of law and international civil procedure. The fact that the pertinent legal rules are scattered across various legal instruments that do not add up to a comprehensive, concise and coherent body of rules, however, gives rise to a number of concerns. Therefore, the European Commission as well as the European Parliament have called for a discussion on the future of European Private International Law in general and the merits and demerits of a European Code on Private International Law in particular.*
>
> *Based on a study commissioned by the Committee on Legal Affairs of the European Parliament, the following article seeks to contribute to this debate. It is organized in four parts: The first part analyses the current state of European Private International Law (PIL), in particular its perceived deficiencies. The second part describes possible courses of action to overcome these deficiencies, including a European Code on PIL. The third analyses the merits and demerits of possible courses of action, including the adoption of a European Code on PIL. The fourth part suggests a course of action that will gradually lead to a more coherent legislative framework for European PIL.*

**Dieter Henrich**, *Privatautonomie, Parteiautonomie: (Familienrechtliche) Zukunftsperspektiven* (Private Autonomy, Party Autonomy: (Family Law) Future Perspectives)

> *Much as it previously dominated the law of contracts, private autonomy increasingly dominates the area of family law. Party autonomy, the right of the parties to select the applicable law, has found acceptance in international family law. The consequences in many areas are nothing less than revolutionary, including divorce by mutual consent, cohabitation instead of marriage, children having two legal fathers or two legal mothers or even three parents (sperm donor and a lesbian couple), surrogate motherhood, and*

*impacts on divorce and maintenance in choice-of-law cases. Not all of these developments may be welcomed by all individuals. But in better serving self-determination, they are attractive to others and represent future perspectives.*

**Reinhard Zimmermann**, *Das Verwandtenerbrecht in historisch-vergleichender Perspektive* (The Intestate Succession Rights of the Deceased's Relatives in Historical and Comparative Perspective)

*The intestate succession systems are based, everywhere, on the idea of family succession. The deceased's family consists of his (blood-)relatives as well as, possibly, his or her surviving spouse. The law, therefore, is faced with two central tasks: (i) to determine in which sequence the deceased's relatives are called to inherit and (ii) to coordinate the position of the survivingspouse with that of the relatives. The present paper analyses how the intestate systems of the Western world deal with the first of these tasks. In spite of differences in detail, they can be subdivided into three types: the "French system", the three-line system, and the parentelic system. Analyzing them in historical and comparative perspective reveals basic commonalities (e.g. the preference given to descendants, and succession per stirpes), but also curious relics of past ages (e.g. the concept of "representation", paterna paternis materna maternis, and la fente successorale). Other criteria relevant for a comparative assessment of the different solutions advocated by the three systems are consistency in the implementation of fundamental structural ideas, the avoidance of inconsistencies in evaluation, of arbitrariness, and of discrimination, the ability to forestall manipulations, and the preference for simplicity over complexity. The presumed intention of a typical deceased can be an important argument for deciding what might be the most appropriate solution, for the rules on intestate succession should, in case of doubt, reflect what those subject to these rules would typically regard as appropriate, as far as the distribution of their estate is concerned. But there are also issues where reliance on the presumed intention is misplaced. All in all, a reasonably limited parentelic system appears to be the superior intestate succession system. A strongly cultural impregnation of the rules on intestate succession is apparent only if Western and non-Western systems are compared. Within the Western legal world, the differences existing between the legal systems cannot be traced to differences in legal culture. All modern legal systems of the Western world attempt to take account of the deceased's relatives in a rational fashion. In that respect they build on the*

*scheme established in Justinian's novels, the earliest one that can be labelled modern. The "French" system and the three-line system represent different manifestationsof the Justinianic scheme, while the parentelic system implements its underlying ideas in an even more consistent manner, and inspired by Natural law ideas. Why the one system has taken root in one country, and the other in another, is a matter of historical contingency.*

**Alistair Price** and **Andrew Hutchison**, *Judicial Review of Exercises of Contractual Power: South Africa's Divergence from the Common Law Tradition*

*No English abstract available*

**François Du Toit**, *The South African Trust in the Begriffshimmel? – Language, Translation and Taxonomy*

*No English abstract available*