



Public Lecture Series Fall 2017

Transnationalities in Migration and Mobility Research

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Thursday, 7 December 2017

**Virtual Migration to Switzerland: Empirical and Normative
Thoughts on Regulatory Competition**

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Jena**

**Discussant: Dr. Philip Hanke, Institute of Public Law, University of
Bern**

18:15 – 19:45 h

University of Neuchâtel, Rue Abram-Louis-Breguet 2, Room R.113.

Abstract

Migration comes in different forms. For the most part it is actual and involves physical movement of people or assets across borders. However, migration can also be virtual. This is the case when parties to a contract decide to submit their contract to the law of one country with the help of choice of law clause. Those clauses are common in commercial and consumer contracts especially if they involve parties from different countries. And, interestingly, very often those clauses designate Swiss law as the applicable law. And, interestingly, Swiss law is frequently chosen by contractual parties even if neither of them is from or has a connection to Switzerland.

This finding triggers a number of questions. The first, and obvious one relates to the reasons for the parties' choice and, hence, the reasons for the attractiveness of Swiss law? Why do parties choose Swiss law more often than other laws? The second question is a broader one and relates to the development of the law as such: If parties may choose the applicable law, and if they actually do so in practice, ie if they opt out of their own legal system and into another one, what does this mean for the development of the law and the law-making process as such? Do states try to adjust their laws to the perceived needs of contractual parties? Do they compete for application of their laws? In other words: Is there regulatory competition among national legislators? And if so, is this a "good" thing or a "bad" thing? Under what conditions may regulatory competition be "good" meaning that it will create better laws? And, under what conditions may regulatory competition be "bad" meaning that it will lead to worse laws?

In my presentation, I shed light on these and related questions. I argue that empirical evidence shows that there is regulatory competition in contract law. More specifically, I argue that empirical evidence shows that businesses and consumers choose the applicable contract law (including Swiss law) based on the quality of the law and that states respond to these choices by adjusting their contract laws. In addition, I argue that, normatively, regulatory competition in contract law is generally a "good" thing because it is more likely to lead to better laws. It should, therefore, generally be promoted. However, I also argue that regulatory competition may lead to worse laws in some cases. In these cases, regulatory competition should be regulated.

Curriculum Vitae

Giesela Rühl is a full Professor of Civil Law, Civil Procedure, Private International Law, International Civil Procedure and Comparative Law at the Friedrich-Schiller-University in Jena (Germany). Before joining the Friedrich-Schiller-University she was a Fellow of the German National Science Foundation at the Humboldt-University in Berlin (Germany), a Max Weber Fellow at the European University Institute in Florence (Italy), a Senior Research Fellow at the Max Planck Institute (MPI) for Comparative and International Private Law in Hamburg (Germany), and a Joseph Story Research Fellow at the Harvard Law School in Cambridge (USA). During the past years, she has held visiting positions, among others, at the University of Sydney (Australia), the University of Kyushu (Japan) and the Duke Law School (USA).

Giesela Rühl's main research and teaching interests are private international law, international civil procedure (including alternative dispute resolution) as well as comparative law and economic analysis of law. She has written two monographs, edited two collected volumes and published a substantial number of articles in German, European and American law journals. In addition, she is one of the editors of the 4-volume Encyclopedia of Private International Law (Edward Elgar, 2017).

Selected Publications

- "Judicial Cooperation in Civil and Commercial Matters after Brexit: Which Way Forward?" *International & Comparative Law Quarterly* 67 (2018) forthcoming.
- "(Ex Post) Evaluations of Legislative Actions in the European Union: The Example of Private International Law." *Netherlands Journal of Private International Law* (2017): 433–461.
- "Who's Afraid of Comparative Law? The (Side) Effects of Unifying Private International Law in Europe." *European Review of Private Law* 25 (2017): 485–522.
- "Alternative and Online Dispute Resolution for Cross-Border Consumer Contracts: A Critical Evaluation of the European Legislature's Recent Efforts to Promote Competitiveness and Growth in the Internal Market." *Journal of Consumer Policy* 38 (2015): 431–456.
- "The Protection of Weaker Parties in the Private International Law of the European Union: A Portrait of Inconsistency and Conceptual Truancy." *Journal of Private International Law* 10 (2014): 335–358.