

Editorial



The Public-Private Challenge in Comparative Law and Governance

This special issue arises from a cross-disciplinary research initiative focused on the interaction between public and private interests in governance systems, and the re-thinking of public interests in private relations, which we summarize as ‘the public-private challenge’. More specifically this research initiative addresses questions about how public interests can be safeguarded by private actors, within private relationships and within public-private partnerships, and on the interaction between the emergence of public and private interests in relation to contemporary societal challenges such as globalization, digitization and privatization and crises like those of the environment and public health.

This research initiative, funded under the Law Sector Plan of the Dutch Government, is coordinated by the three of us. It is a joint effort of the Erasmus School of Law in Rotterdam and the Faculty of Law of the University of Groningen.

This special issue contains four articles (co-)authored by scholars participating in this research initiative. All four articles address the public-private challenge from a comparative law and governance perspective. They embody comparative analyses in four areas exemplifying the need to (re-)balance public and private interests and realize public interests in the regulation of private relationships.

The first article, co-authored by Irene Visser, Jamie Breedevelt and Yassine Hasnaoui, focuses on mortgage enforcement, a topic where the clash between public and private interests and the need to (re-)balance them became very clear after the credit crisis of 2008–2013. The article proposes a framework to compare the different default resolution approaches in Europe, with a focus on

the pre-enforcement and enforcement stage. It considers not only the national and international legal frameworks but also the socio-economic and financial influences on default resolution approaches.

In the second article, Sarah Fick and Michel Vols address the protection of the right to housing (which bears a public human rights dimension) against private evictions. They compare the approaches of the European Court of Human Rights (ECtHR) and the South African Constitutional Court. The article analyses the case law of both courts with the help of concepts developed in legal theory. These concepts concern vertical and horizontal relations between actors involved in housing law cases, as well as direct and indirect effect of human and constitutional rights.

In the third article, Arpi Karapetian compares Dutch and UK insolvency law regarding new preventive restructuring mechanisms. Traditionally, rules on directors' liability focus on preventing the debtor from trading while liquidation proceedings are unavoidable. In this situation, a specific type of private interests – creditors' interest – dominate the picture. With the emergence of preventive restructuring mechanisms, a new dynamic is created between the public interest in rescuing viable companies through restructuring their debts and the legitimate interests of creditors on the other hand. Karapetian argues that both in the UK and in the Netherlands the purpose of preventive restructuring combined with its potential of harm to creditors' interests, raises the question whether the balance of interests defining directors' duties is still proper.

In the fourth article, Benedikt Schmitz focusses on public interests in private international law. He proposes to rethink the public interest in consumer protection through a critical comparative analysis of Article 6 of Rome I Regulation. He submits that the public interest of consumer protection is not the problem *per se*, but rather its current implementation in the EU conflict of laws for consumer contracts. A radical proposal concludes the article: to remove Article 6 (2) Rome I in its entirety, for the benefit of all stakeholders: consumers, professional parties, and courts.

These four articles offer a small sample of a much larger body of research currently carried out by the Public-Private Challenge team, which includes 8 post-doctoral and 14 PhD candidates, along with several senior professors in

Rotterdam and Groningen. Our team will produce further results of comparative law-and-governance research in the coming years.

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