

## REIMAGINING CONTRACT IN A WORLD OF GLOBAL VALUE CHAINS

Sciences Po, Paris, France, 9–10 May 2019

### Call for papers (abstract deadline 28 February 2019)

// This call forms part of the Global Value Chains Project at Sciences Po Law School, whose aim is to rethink the genealogy, conditions of emergence, effects and significance of global value chains from a critical, interdisciplinary perspective.

The workshop is convened by Klaas Hendrik Eller and Jaakko Salminen and hosted by the Global Value Chain group @ Sciences Po Law School (SAB Global Value Chains).

### // Idea

Global value chains (GVCs) have emerged as a dominant form of capitalism, producing conflicts that stand emblematically for struggles of distribution, participation and equality under globalization. As a mode of production, GVCs rely heavily on a legal infrastructure and the interests and ideals represented in it. As production shifts from integrated firms to outsourcing in dispersed networks, the institution of contract becomes key in the legal construction of GVCs, if not their very animating logic. Legal departments of lead firms and business practice draw on the openness of contract as a framework for multiple forms of social cooperation to establish complex cascading webs of contracts. Ensuring control throughout the value chain implies a new mode of usage for contract, beyond safeguarding and towards organizing cooperation.

Yet the exact role of contract remains obscure for practical and conceptual reasons: practically because contracting techniques are a closely guarded business secret and are barely litigated upon in public, and conceptually because paradigms of contract, as they are taught in law schools around the world, largely stem from the 19th century with few incremental developments since. In particular, from the perspective of privity the idea that contracts are foundational building blocks in multitiered, globally fragmented, and centrally governed networks of production can hardly be grasped.

What are the aggregate dynamics arising out of the interplay between numerous contracts and the underlying mechanisms of coordination and disruption? Despite inroads towards new understandings of contract under rubrics such as relational contracting and contract governance, the barrier of neo-classical privity remains so firmly ingrained in legal dogma that even these new approaches are reluctant to go beyond. And while the concept of privity was easily transnationalized, the various instruments serving to locally re-embed contract are lagging far behind.

In short, GVCs seem to command a novel direction of research on contracts, not taking individual doctrines or contract law as a broader field as a starting point, but rather the social institution of the value chain itself. Besides the immediate exchange relation between contracting parties that dominates liberal

contract theories, third-party effects and the political economy of contracting become preeminent not only within the value chain itself but also on a broader, global societal and environmental level. Contracts have become a contested and fragmented arena of strategic corporate and civic engagement and activism.

What does this mean for contract law? No single contractual approach or theory is fully equipped to provide an analysis of the major implications. Rather, it seems about time to initiate a dialogue between competing or complementary contractual theories to explore their respective understanding of and contribution to GVCs. Through this, we hope to see more clearly along which lines contract law could recalibrate—by revisiting the first half of the 20th century when the general paradigms of contract and tort were being expanded to respond to the liability deficit of contractual distribution chains before these developments were restricted into their own little niche of product liability law, or by imagining something completely new?

And what will be the procedural parameters of new global litigation related to contract—do earlier focuses on tort and *lex loci damni* have a place in centrally-coordinated GVCs? How does the contract/tort interface structure recent cases of supply chain liability litigation? What implications does the move from corporate governance to governance through contract have not only for private international law but for local and transnational regulation? How do the hard law approaches of recent value chain due diligence regulation—from the US Dodd Frank Section 1502 to the EU Non-Financial Reporting Directive, from the Californian Transparency in Supply Chains Act to the French *loi sur le devoir de vigilance*—translate into contractual practice? And, crucially, what does contract's role as the building block of global value chains imply for public debate and pedagogy?

We want to open the table for a reimagining of the very foundations of the basic private law paradigm of contract, whether related to contract per se or the more general regulation of contractually structured entities of production. These re-imaginings could draw from recent theoretical or empirical approaches to value chain governance, private international law, or the political economy of contract dogma, to say nothing of revisiting the precursors of value chain litigation in earlier generations, such as the Foreign Corrupt Practices Act and product liability law. Once again, it seems that we are about to break the bounds of privity—just this time around the effect on our understanding of contract may be even more radical than last.

## // Submissions

Towards this, we are organizing the workshop *Reimagining Contract in a World of Global Value Chains* at Sciences Po Paris, France, on **9–10 May 2019**. The deadline for abstracts and paper proposals (c. 1 page) is **28 February 2019**. Accepted presenters will be notified by **4 March** and are expected to provide draft papers (4–6000 words) for circulation by **1 May**. Participation is free of charge for presenters and, in exceptional cases, we may have a small amount of funds available for reimbursing travel costs. This call is coupled to a planned special edition of a European peer-reviewed law journal focusing on contract law and global value chains which selected papers may be invited to join.

For more information and proposal submissions, contact the organizers at [reimaginingcontract@gmail.com](mailto:reimaginingcontract@gmail.com).