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DOI

[10.1515/ercl-2020-0001](https://doi.org/10.1515/ercl-2020-0001)

Publication date

2020

Document Version

Final published version

Published in

European Review of Contract Law

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[Link to publication](#)

Citation for published version (APA):

Eller, K. H., & Salminen, J. (2020). Reimagining Contract in a World of Global Value Chains. *European Review of Contract Law*, 16(1), 1-2. <https://doi.org/10.1515/ercl-2020-0001>

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Editorial

Klaas Hendrik Eller* and Jaakko Salminen**

Reimagining Contract in a World of Global Value Chains

<https://doi.org/10.1515/ercl-2020-0001>

Global value chains (GVCs) have emerged as a novel form of capitalism, raising fundamental questions of distribution, participation and equality under globalization. In their animating rationale, GVCs rely heavily on a legal infrastructure and its underlying interests and ideals. As production shifts from integrated firms to outsourcing in dispersed networks, the institution of contract becomes key in the legal construction of GVCs. 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.

At the same time, the exact role of contract remains obscure for practical and conceptual reasons: practically because contracting techniques are kept as a 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? Approaches under rubrics such as relational contracting and contract governance have begun to question the barrier of neo-classical privity, yet remain reluctant to go beyond. And while the concept of privity was easily transnationalised, the various instruments serving to locally re-embed contract are lagging behind.

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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. The legal regimes of GVCs are fragmented and composed of many disciplines. Yet, they defy the niche eclecticism of the notorious ‘law of the horse’ that became a prominent reference in early debates around the role of law in cyberspace.¹ This issue’s focus on contract by no means claims an exclusive inroad to understanding GVCs, but identifies contract as a fruitful starting point to account for the plurality of legal disciplines at play. Crucially, the ‘public’ nature of issues voiced by means of contract needs to be accommodated. 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 level encompassing social, environmental, cultural and economic interests. Contracts have become a contested and fragmented arena of strategic corporate and civic engagement and activism.

We explored possible futures of contract law in this scenario at an international workshop titled ‘Reimagining Contract in a World of Global Value Chains’. The workshop was organized at Sciences Po Law School 2–3 May 2019, hosted by the School’s ‘SAB Global Value Chains’ project and supported by the University of Turku Faculty of Law and Humboldt University of Berlin. Our workshop aimed at initiating 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 and should 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.

This special issue reflects some of the diverse inputs we received over two productive days in Paris. They range from the construction of new vistas on the landscape of contract to inherent critiques of these very vistas, from empirical insights to theoretical debates, from a focus on networked corporate actors as the organizational core of global value chains to a critique of the role of consumers as their ultimate drivers. The contributions are meant to open up new debates rather than settle existing ones and form part of an ongoing conversation that we invite readers to join.

¹ See L. Lessig, ‘The Law of the horse: What Cyberlaw might teach’, 113 *Harvard Law Review* 501 (1999) responding to F. Easterbrook, ‘Cyberlaw and the Law of the Horse’, *The University of Chicago Legal Forum* 207 (1996).