

American Conflicts Law in the 20th Century: Review and Perspective

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Abstract

American choice of law methodologies fall into three categories: (1) the multilateralist approach, (2) the unilateralist approach, and (3) the substantive approach. The traditional multilateralist approach, based on the vested rights theory, emphasizing the importance of Territorialism, was the dominant theory before the so-called American Conflicts Revolution. Countless modern flexible approaches which contributed the said Revolution, and appeared mainly for the purpose of individual justice since 1950s, are either unilateralist approaches or substantive approaches. Modern approaches, generally speaking, do solve the question of injustice, however, certainty as well as predictability that traditional approach said to be contained are more often than not sacrificed simultaneously. As long as the substantive law approach has been pervading not only the United States but also the other side of the Atlantic, the author of this article is of the opinion that it has become impossible to comprehend current conflicts law without examining the substantive tenor, policy and value of each law-fact pattern during the choice of law process.

An overview of this article will be illustrated in Part I. The traditional multilateralism will be expounded in Part II from both the theoretical and practical point of view. Part III is an introduction of the American Conflicts Revolution, where the author reviews several influential modern

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methodologies and leading courts cases. The phenomenon of hybrid approaches and chaos of conflicts decisions which most commentators criticized after the above-mentioned Revolution will be introduced in Part IV. Part V is a detailed discussion of the difficulties American conflicts law scholars faced at the end of the 20th century. Finally, a brief review of this article and the conclusion as well as suggestion will appear in Part VI.

Keywords: conflict of laws, conflicts law, choice of law, conflicts revolution, approach, methodology, interests analysis, the most significant relationship, better rule of law, comparative impairment, substantive value

Abstract: This article discusses the evolution of American conflicts law methodology from the 19th century to the present. It begins with a review of the traditional common law approach, which was based on the concept of "comity" and the "interests analysis" of the courts. The article then examines the "conflicts revolution" of the 1930s, which was characterized by the rise of the "better rule of law" and "comparative impairment" theories. The author argues that these theories were a response to the increasing complexity of international trade and the need for a more uniform and predictable legal system. The article also discusses the "choice of law" movement, which sought to identify the law that had the most significant relationship to the parties and the transaction. Finally, the author concludes by suggesting that the current conflicts law methodology should be based on a combination of these theories, with a focus on the interests of the parties and the need for a uniform and predictable legal system.

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