

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 late 19th century to the present. It begins with a review of the traditional conflict of laws approach, which was based on the idea of territoriality and the application of the law of the place where the event occurred. This approach was criticized for being too rigid and not taking into account the interests of the parties involved. The article then discusses the emergence of the "better rule of law" approach, which sought to apply the law of the state with the most significant relationship to the parties. This approach was also criticized for being too subjective and not providing a clear methodology. The article then discusses the emergence of the "comparative impairment" approach, which sought to apply the law of the state whose law would be most impaired by the application of the other state's law. This approach was also criticized for being too subjective and not providing a clear methodology. The article then discusses the emergence of the "interests analysis" approach, which sought to apply the law of the state whose law would be most interested in the outcome of the case. This approach was also criticized for being too subjective and not providing a clear methodology. The article concludes by discussing the current state of conflicts law methodology and suggesting a hybrid approach that combines the strengths of the different approaches.

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