

Article: Liberating the Individual from Battles Between States – Justifying Party Autonomy in Conflict of Laws

Matthias Lehmann has written an article that, while trying to give a theoretical justification for the principle of party autonomy, attacks the dominant conception of conflict of laws. It has been published in vol. 41 of the *Vanderbilt Journal of Transnational Law*, pp. 381-434 (2008).

Here is the abstract:

Current theories of conflict of laws have one common feature: they all consider the question of the applicable law in terms of a conflict between states. Legal systems are seen as fighting with each other over the application of law to a certain case. From this perspective, the goal of conflicts methods is to assign factual situations to the competent rule maker for resolution. Party autonomy presents a problem for this view: if individuals are allowed to choose which law will be applied to their dispute, it seems as if private persons could determine the outcome of the battle between states—but how is this possible? This Article tries to give a theoretical solution to this puzzle. The underlying idea is that conflicts theory has to be recalibrated. Its goal should not be to solve conflicts between states, but to serve the individual, its needs and wants. Through this shift of focus, it becomes not only possible to justify party autonomy, but also to answer a number of practical questions raised by it. Furthermore, this Article will propose a new normative

category, “relatively mandatory rules” and discuss some important implications that the new approach may have for conflict of laws generally.