

Childress on Comity as Conflict

Trey Childress, who teaches at Pepperdine University School of Law, has posted *Comity as Conflict: Resituating Comity as Conflict of Laws* on SSRN. Here is the abstract:

This Article seeks to resituate international comity as a conflict of laws doctrine. Comity is important to United States courts in transnational cases and its importance will continue to grow as more international issues creep into domestic litigation. Recognizing this, the Article evaluates the recent invocation of the comity doctrine in the In re South African Apartheid Litigation, filed for alleged violations of the Alien Tort Statute and currently pending before the United States Court of Appeals for the Second Circuit. By evaluating that case and others, the Article shows that courts use the comity doctrine in many circumstances without considering its historical position as a conflict of laws doctrine. In so doing, courts gloss over the doctrine's foundation in conflicts jurisprudence, and thus give short shrift to the doctrine's main historical purpose, which was to mediate the conflict between sovereigns and their laws. This non-conflicts approach leads courts to give only cursory consideration to governmental interests and obscures the ultimate question in transnational cases where a conflict of sovereign power is presented: Is there a conflict between sovereigns that counsels in favor of judicial deference through comity? Resituating comity within the conflict of laws tradition provides a more principled basis for applying the doctrine by bringing sovereign interests to light. Applying comity in this way also emerges the complex political and international concerns at stake in many transnational cases.

The paper is forthcoming in the *University of California - Davies Law Review*. It can be downloaded [here](#).