

Conflict Scholarship in Partisan Times

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Symeon C. Symeonides, [*Choice of Law in the American Courts in 2020: Thirty-Fourth Annual Survey*](#), 69 **Am. J. Comp. L.** 235 (2021).

As the saying goes, we live in partisan times. This makes it easy to succumb to the delicious allure of Manichean partisanship. Legal scholars are not immune from this temptation. Some identify with one side or the other, advocate for one party or the other, espouse one political agenda or the other. But this moment urges us to think about the role of legal academics in a civic discourse. What is our function? How can we contribute to make the important discussions happening around the country more productive, informed, lasting, inclusive, reasonable, and effective? At a time when the legitimacy of many other institutions is seriously questioned, what is our role in shaping how people view lawyers, courts, and the rule of law?

I thought of these themes when reading Symeon Symeonides's *Choice of Law in the American Courts in 2020*. It is the 30th time that Symeonides has canvassed developments in conflict of laws doctrine and summarized the year's developments in the field. The stated purpose is "to inform, rather than to advocate." To do so, Symeonides casts a wide initial net, reading hundreds of cases that touch upon conflict of laws topics. Year after year. The surveys highlight key developments in the field, as well as broader trends. This is an immense amount of work and provides a significant benefit to many scholars, practitioners, and judges. The survey also represents a different model of legal scholarship than the standard law article fare, providing food for thought about the many roles of legal scholars.

Symeonides's surveys are well-known and used for numerous purposes. One is providing a fundamentally descriptive account of diverse and dispersed developments in an amorphous field. Descriptive work is sometimes demeaned as intellectually less rigorous than high-flying theory. Perhaps such a view is understandable in fields with ample knowledge of the legal world. But in many other areas, we still lack broad and reliable accounts of what is happening out there. In such environments, surveys can lay invaluable groundwork for subsequent research. This type of survey work relies on reading many, many cases. Perhaps that is also a practical though toilsome technique to negotiate the conflicting risks of the tyranny of the anecdote and the tyranny of big data.

Symeonides' descriptive work highlights recent developments and departures in conflict methodology while explaining where the law remains stable or is stabilizing. This is helpful in a field where many cases are not explicitly labeled as conflict cases. The survey also explains developments in specific subject matters that have seen important cases. His "Methodological Table" exemplifies the approach—an overview chart of the main choice-of-law approaches followed in the States, the District of Columbia, and Puerto Rico. Introduced with many caveats and asterisks, it is still a surprisingly useful tool for newcomers to the field to orient themselves and to acquire an initial feel for the lay of the land.

To ensure this essay does not become a Mini-Festschrift, let me examine some areas where the survey might have room for improvement. The clearest place is the use of tables and charts to "depict the growth of conflicts cases" over the last thirty years. These sections do not discuss at length the potential for selection effects and data availability effects. As such, they might leave hasty readers with an impression of developments in the law without a corresponding measure of confidence and reliability. Elsewhere, it is clear that the descriptive approach of the survey is aspirational, although I suspect readers vary as to whether they appreciate or disregard occasional editorializing. Commentaries that stray from pure description push the surveys closer to an annual Restatement of the Law, with all attendant tensions. Predictably, readers' receptiveness will vary.

Despite these caveats and tensions, Symeonides has done a great service to the field with his surveys. This is certainly not the only way to practice legal scholarship and much would be lost if it were. But it is one important, while perhaps neglected and undervalued, model of how to contribute. Symeonides is not the only legal academic engaged in this type of project. But this type of work represents, at least on this continent, a diminishing fraction of what legal academics do and what they are rewarded for doing. Maybe it is time to re-evaluate that.

A final reason to read this contribution is that it is Symeonides' last survey. Beginning next year, John Coyle, William Dodge, and Aaron Simowitz will assume this role. The survey is in good hands and I look forward to seeing how they will build and develop upon the strong foundations that Symeonides has laid out with such care and dedication.

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