National Interest in Private International Law: A Historical Perspective

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Private International law deals with civil disputes between private parties that contain international elements. It is thus easy to assume that nations do not have interests in this discipline of law. However, this cannot be further from the truth. Taking a historical review of the developments of modern private international law, this paper argues that national interests have always been the driving forces behind this discipline of law. Following the rise of sovereign states and international commerce in 17th century, modern private international law has long been shaped by two opposing forces, sovereignty and the facilitation of international commerce. The former tends to drive the law towards a narrow, nationalistic approach that persuades lawmakers and courts to refrain from applying foreign law, declining jurisdiction, and giving effect to foreign judgments, while the latter international approach does the exact opposite. The different private international law regimes among countries may thus be explained by their different emphasis on these two types of interests, as well as their responses to the approaches taken by other countries. The historical developments in the United States illustrate these national interests. Its approach on private International law can be categorized into three stages. First, in the early days of the nation, it took a nationalist approach that aimed at avoiding interference from Britain. Second, upon becoming a superpower of the world after the second world war, it changed to an expansionist approach, featuring extraterritorial application of US antitrust law and securities law, and broad assumption of long-arm jurisdiciton. Finally, starting from the 1970s, the expansionist approach has since been substantially restrained in light of the rise of European Union (and its predecessors) and other new economic powers such as Japan and China. It is concluded that national interest is an essential consideration to explain the past as well as to predict the future of private International law.

India's Private International Law: The saga of Persistence with the colonial instincts

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Custom in sovereign contracts has been interpreted using the canons of English law as a legacy of colonial approach expanding the development of a commercial law framework in India. The law finding method adopted by the colonial courts and post independence precedents have solidified key concepts such as party autonomy, rights of third parties, choice of law, scope of application and state jurisdiction. This trend in the evolution of common law on recognition of custom particularly the idea of determinations related to personal and inheritance aspects can be attributed to english law method of habitual residence and domicile, has shaped interstate and international disputes on ownership and management of assets. In order to identify the methods and approaches of interpretation and application of substantive commercial law and its colonial origins, the legal foundations of private rights has to be revisited. Through this paper, the authors evaluate the interface of private international law while focusing on the questions of rights and obligations between the parties, applicable law and the determination of a foreign element in the colonial-postcolonial transition.

Bowring's Legacies

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This contribution will reconstruct extraterritorial legal decisions from the UK in Siam that no longer exist in print. They were originally published within British consul reports detailing the decisions consuls reached in accordance with the extraterritorial jurisdiction provisions enshrined in the 1855 Bowring Treaty between Siam and the United Kingdom. The Bowring Treaty—while sometimes credited with introducing European tax modalities to Thailand—is understudied in international legal scholarship generally and amongst TWAIL scholars specifically. Although Thailand/Siam was never officially colonialized, the Bowring Treaty required that British citizens living and trading in Siam be subject to the laws of the United Kingdom, which expanded to economic as well as criminal disputes; in some cases, it expanded to non-UK citizens. These disputes were settled by British consuls who often held no legal training yet harnessed an interpretive authority backed by Empire. At present, it appears that all of the original consul reports have been lost to history, but history has provided a window for the diligent: consul decisions can be reconstructed through the appeals mechanism implemented in the 1870s which required judges in the British territory of Singapore to hear appeals from Siam and to produce written judgments. Working backward from these judgments, my contribution seeks to provide accurate sketches rather than replicas of the original reports. It aims to scrutinize those sketches with three primary questions in mind: (1) What kinds of decisions were heard and why? (2) Who was affected? (3) How did this impact the development of international law in Thailand and in the ASEAN region more generally? My hope is that these sketches will supplement existing scholarship exploring colonialism's relationship to the process of international legal reproduction and expand the discussion on colonialism's impact on so-called 'non-colonies' in Southeast Asia.
China's Alaskan Jurisprudence

China's Alaskan Jurisprudence

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The United States Court for China was a Untied States extraterritorial court based in Shanghai that existed from 1906 to 1943. Established by the United States Congress, the Court was treated as a U.S. federal court. However, it also took family law and probate cases, cases which are typically reserved for state courts within the United States. Operating as both a state and federal court, the US Court for China faced a challenge - it had no substantive law on which the draw from in adjudicating cases in China. Searching for a body of law, the court applied a cavalcade of law, including the municipal code of Washington, D.C., the territorial law of Alaska, as well as acts of the U.S. Congress, English common law as it existed in the American colonies immediately preceding independence, and even selectively chosen Chinese custom. This article will examine the Alaskan law applied by the Court. I begin by providing a little historical background of the legal situation of Americans in China after the the US and China entered into the unequal Treaty of Wanghia. After that, I will briefly examine the US Court for China, including its history, structure, and function. Finally, I will examine the major cases where the Court opted to apply Alaskan territorial law. I will attempt to explore the background of these cases, including their factual background and the social problems the Court sought to address through the use of Alaskan law. From this examination, I hope to identify some of the reasons why the Court chose to apply Alaskan territorial law and why such a choice was indicative of the legal conception of China during the Age of Imperialism.

‘From British Extra-territoriality to the Professionalization of Local Legal Actors in China, Japan and the Ottoman Empire: A Pluriversal Comparative Legal History’

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The consular courts are usually studied under their imperial or colonial aspects grounded on the principle of extraterritoriality that lies at the core of these institutions. A well-known example of this privilege of extraterritoriality among historians of international law is provided by the British Supreme Court and the memoirs of one of its founders and most famous Chief judges, Sir Edmund Grimany Hornby. More than a further illustration of extraterritoriality, my contribution intends to highlight an original side of this very material. Namely, it will be considered for both its theoretical and pedagogical value, as being a testimony of the British muster of transnational and cross-cultural justice as well as an important indicator of the professionalization of local legal actors.

The paper is based on the example of three regions, which were ruled under a regime of hypocolony via the extraterritorial rights, namely the Ottoman Empire, China and Japan, where Sir Edmund Hornby successively undertook his task as Chief judge of the Supreme court. Instead of tackling the consular courts as a history of unilateral imposition of Western law and ‘modernity’, my contribution intends to emphasize the encounters. Examining both the standardization process of legal trainings and legal thought to which the Court led, as well as the local judicial practices, resistance and vernacular consideration for legal professions, the paper aims at offering further methodologic and paradigmatic frames to the studies in comparative legal history. The *pluriversal* approach of this work proposes thus to dismantle the Eurocentric modernity and universality that still often confine comparative works within colonial epistemics.