

THE EVOLUTION OF PRIVATE INTERNATIONAL LAW: FROM SAVIGNY'S LOCALIZATION THEORY TO CONTEMPORARY EUROPEAN INTEGRATION

The article examines the historical evolution and contemporary transformation of private international law (PIL), tracing its development from the nineteenth-century localization paradigm to the modern multilevel framework shaped by European integration, constitutionalization, and transnational regulatory interdependence. It argues that PIL should be understood not merely as a technical mechanism for determining applicable law, but as an autonomous and normatively significant discipline operating at the intersection of sovereignty, market integration, constitutional values, and transnational coordination.

The study reconstructs the foundations of the classical localization model, according to which private legal relationships possess objective connections to particular legal orders identifiable through connecting factors such as domicile, nationality, habitual residence, or place of performance. Within this framework, conflict-of-laws rules functioned as neutral coordinating norms intended to ensure predictability and international harmony of decisions.

The article further demonstrates how the twentieth century transformed this methodological neutrality. The expansion of welfare regulation, consumer and labor protection, and transnational commerce revealed that the choice of applicable law inevitably affects substantive outcomes and broader regulatory objectives. Consequently, PIL became increasingly materialized through mandatory rules, public policy exceptions, and protective connecting factors integrating considerations of social justice, constitutional rights, and regulatory policy into conflict-of-laws reasoning.

Special attention is devoted to the impact of European integration, which embedded PIL within a supranational and constitutionally layered legal order. The article concludes that contemporary PIL represents a synthesis rather than a rupture with classical theory, combining localization, party autonomy, constitutional sensitivity, and supranational coordination in order to balance legal certainty with normative responsiveness in an interconnected legal order.

Keywords: *private international law (PIL), Friedrich Carl von Savigny, conflict of laws, connecting factors, European integration, party autonomy, multilevel legal order.*

Руденко Оксана. Еволюція міжнародного приватного права: від локалізаційної теорії Ф. К. Савіньї до сучасної європейської інтеграції.

Стаття присвячена дослідженню історичної еволюції та сучасної трансформації міжнародного приватного права (МПрП), простежуючи його розвиток від класичної локалізаційної парадигми XIX століття до сучасної багаторівневої моделі, сформованої під впливом європейської інтеграції, конституціоналізації та

транснаціональної регуляторної взаємозалежності. Обґрунтовується, що МПрП слід розглядати не лише як технічний механізм визначення застосовного права, а як автономну й нормативно значущу галузь права, що функціонує на перетині державного суверенітету, ринкової інтеграції, конституційних цінностей і транснаціональної координації.

У статті реконструюються засади класичної локалізаційної моделі, відповідно до якої кожне приватноправове відношення має об'єктивний зв'язок із певним правопорядком, що визначається через колізійні прив'язки, зокрема доміциль, громадянство, звичайне місце проживання або місце виконання зобов'язання. У межах цієї моделі колізійні норми функціонували як нейтральні координаційні механізми, покликані забезпечити передбачуваність, правову визначеність та міжнародну узгодженість судових рішень.

Показано, що у ХХ столітті така методологічна нейтральність зазнала істотної трансформації під впливом розвитку соціальної держави, захисту прав споживачів і працівників, а також розширення транснаціональної торгівлі. Унаслідок цього МПрП дедалі більше матеріалізувалося через застосування імперативних норм, застереження про публічний порядок і захисні колізійні прив'язки, які інтегрують міркування соціальної справедливості, конституційних прав і регуляторної політики у колізійно-правове регулювання.

Особливу увагу приділено впливу європейської інтеграції, яка включила МПрП до наднаціонального та конституційно багаторівневого правового порядку. У статті зроблено висновок, що сучасне МПрП інтегрує конституційну чутливість, регуляторну гнучкість, автономію волі сторін і наднаціональну координацію, що дозволяє поєднувати правову визначеність із нормативною адаптивністю в умовах дедалі більш взаємопов'язаного правового порядку.

***Ключові слова:** міжнародне приватне право (МПрП), Фрідріх Карл фон Савіньї, колізійне право, колізійні прив'язки, європейська інтеграція, автономія волі сторін, багаторівневий правовий порядок.*

Introduction. Private international law (PIL) occupies a unique position within modern legal systems as it governs cross-border private relationships and determines the applicable legal order in situations involving multiple jurisdictions. German legal scholarship has played a decisive role in shaping the conceptual and methodological foundations of this field [3, p. 42].

The intellectual origins of contemporary conflict-of-laws theory are deeply rooted in nineteenth-century German legal science. However, subsequent socio-economic developments, globalization, and European integration have significantly transformed traditional doctrinal constructions. This article aims to reassess the evolution of German PIL by analyzing its classical foundations and its modern transformations within the European legal order.

German legal thought has traditionally emphasized systematic coherence, conceptual precision, and philosophical depth. The historical school of law, emerging in the early nineteenth century, argued that legal norms evolve organically within a particular cultural and social context [7, p. 855].

Within this intellectual framework, PIL was not conceived as an arbitrary set of jurisdictional rules but as a logically structured system designed to identify the legal order most closely connected to a specific legal relationship.

The methodological pillars of German PIL include: conceptual classification of legal relationships, systematic interpretation of legal norms, neutrality of conflict rules, commitment to international legal harmony [6].

These features established a doctrinal model that would influence not only continental Europe but also comparative conflict-of-laws scholarship worldwide.

The aim of the article is to analyze the historical evolution and contemporary transformation of private international law, with particular emphasis on the development of German conflict-of-laws doctrine from Savigny's localization theory to the modern multilevel framework shaped by European integration, constitutionalization, and transnational regulatory interdependence.

Literature Review. The theoretical foundations of PIL were significantly shaped by the works of Friedrich Carl von Savigny, whose localization theory established the classical methodological framework of conflict-of-laws reasoning. Savigny's concept of the "seat" of a legal relationship became the cornerstone of continental European PIL and influenced subsequent doctrinal developments across Europe [14].

Further development of German conflict-of-laws doctrine is associated with the works of Ernst Kegel, Gerhard Kegel, and other scholars who introduced functional and policy-oriented approaches into PIL. Their research emphasized that conflict rules are not entirely neutral and must account for regulatory objectives, social interests, and considerations of justice [5].

Contemporary scholarship increasingly focuses on the Europeanization and constitutionalization of PIL. Researchers such as Jan von Hein, Christian von Bar, and Ulrich Magnus analyze the impact of European Union regulations on jurisdiction, applicable law, and the harmonization of conflict rules within the EU legal order. Particular attention is devoted to the interaction between PIL, fundamental rights, and supranational governance.

Recent academic discussions also address the influence of globalization, digitalization, and transnational commerce on the evolution of conflict-of-laws methodology. Modern studies highlight the growing importance of party autonomy, overriding mandatory provisions, legal pluralism, and the principle of the closest connection in contemporary PIL [1].

Results and Discussion. Friedrich Carl von Savigny (1779–1861) is widely regarded as the architect of modern PIL. In his monumental work *System of the Present Roman Law*, he proposed that each private legal relationship possesses an inherent "seat" (*Sitz des Rechtsverhältnisses*), which determines the legal system most naturally connected to it. Unlike earlier territorial approaches, Savigny's model sought objective criteria for identifying the applicable law. Conflict rules were not intended to advance national interests but to locate the legal system with the closest connection to the disputed relationship. This approach marked a significant departure from sovereignty-based thinking and introduced a universalist dimension into conflict-of-laws methodology.

The localization theory represents a systematic attempt to construct PIL as a coherent and autonomous legal discipline grounded in objective methodological principles. At its core lies the proposition that every private legal relationship is inherently connected to a particular legal order, and that this connection can be rationally identified through juridical analysis [15].

The central category of the theory is the "seat" (*Sitz*) of the legal relationship. This concept does not refer to physical territory in a purely geographical sense, nor does it simply reflect the forum's authority. Instead, it denotes the normative center of gravity of the legal

relationship – the legal system to which the relationship most naturally belongs according to its internal structure.

The seat is determined by examining the legal nature of the relationship. Different categories of private law relations possess distinct structural characteristics, and these characteristics point toward specific connecting factors, in particular:

- Personal status is connected to domicile or habitual residence;
- Rights in rem are connected to the location of the property (*lex rei sitae*);
- Contractual obligations are linked to the place of performance or closest connection;
- Succession may be connected to nationality or last habitual residence.

Thus, the seat is not chosen arbitrarily; it is deduced from the intrinsic juridical logic of the relationship.

Within this framework, conflict-of-laws rules are conceived as secondary or meta-norms. They do not regulate substantive conduct directly. Instead, they serve a coordinating function by identifying the applicable legal system.

A fundamental characteristic of this approach is neutrality. Conflict rules are not instruments of national preference or policy enforcement. They are methodological devices intended to secure coherence and international harmony of decisions. The aim is that courts in different jurisdictions, when confronted with the same factual situation, should ideally designate the same applicable law.

This neutrality differentiates localization theory from unilateralist or sovereignty-based models, where the forum prioritizes its own legislative interests [4].

A key theoretical innovation lies in the departure from rigid territorialism. Earlier doctrines often treated the applicability of law as an extension of sovereign power over territory. Under such views, the forum's law prevailed by virtue of state authority.

Localization theory reorients the inquiry. The decisive question is not: "Which sovereign has authority?" but rather: "To which legal order does this relationship objectively belong?" The analysis shifts from political control to juridical structure.

In this sense, the theory promotes a depoliticized understanding of PIL. It assumes that legal systems coexist within a broader community and that cross-border disputes require coordination rather than competition.

The localization approach depends on systematic categorization of legal relationships. It presupposes that private law can be divided into coherent fields – family law, property law, obligations, succession – each governed by characteristic connecting factors.

This structural classification performs two functions:

1. It enhances predictability and legal certainty;
2. It enables the construction of a logically ordered conflict-of-laws system.

Such systematic coherence remains visible in modern codifications and European regulations, particularly in the structured articulation of connecting factors and exceptions.

Although classical localization theory often relied on predetermined connecting factors, its deeper logic anticipates the modern principle of the "closest connection." The search for the seat essentially represents an inquiry into which legal system exhibits the most significant relationship to the dispute [8].

The closest-connection principle operates on two levels:

- Formal level: identification of connecting factors (domicile, location, performance);
- Substantive level: assessment of the relationship's normative center of gravity.

This dual structure reveals that localization is not mechanical but analytical.

A further structural element of the theory is its universalist aspiration. It assumes that legal systems share sufficiently analogous conceptual foundations to permit mutual recognition and application of foreign law.

The objective of international harmony of decisions implies that: similar disputes should lead to similar applicable laws regardless of forum; the choice-of-law process should not distort substantive justice; courts should respect foreign legal systems as equal participants in a transnational legal order [1].

This universalist orientation represents a normative commitment to cooperation rather than dominance. The conceptual strengths of localization theory include: systematic coherence; predictability; neutrality; structural rationality; compatibility with legal pluralism. By separating conflict rules from substantive regulation, the theory preserves analytical clarity and doctrinal precision.

Despite its coherence, localization theory faces structural limitations in contemporary legal reality: it assumes equivalence among legal systems; it underestimates regulatory policy conflicts; it abstracts from constitutional and human rights considerations; it struggles with digital and deterritorialized relationships.

Consequently, modern PIL modifies classical localization through: mandatory rules; public policy exceptions; party autonomy; supranational harmonization. However, these developments often operate as corrective layers rather than replacements. The structural core – the search for the most appropriate legal system – remains intact.

Even in an era of globalization and multilevel governance, the localization theory provides the foundational grammar of conflict-of-laws reasoning. Whether expressed as “closest connection,” “most significant relationship,” or structured connecting factors, the underlying inquiry continues to revolve around identifying the legal system that constitutes the normative center of the dispute.

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Thus, the theory should be understood not as a static historical doctrine but as a structural paradigm adaptable to contemporary regulatory complexity.

Savigny distinguished between various categories of legal relationships, such as: personal status, property rights, contractual obligations and family relations. For each category, he identified specific connecting factors designed to reflect the internal logic of the relationship. This structural differentiation laid the groundwork for modern codifications of conflict rules and influenced subsequent legislative developments across Europe.

Although Savigny’s theory established a coherent and elegant system, critics argued that it was overly abstract and insufficiently responsive to socio-political realities.

Twentieth-century German scholars, particularly Ernst Kegel, advocated a more policy-sensitive approach. They emphasized that conflict rules cannot be entirely neutral; they inevitably reflect value judgments and regulatory objectives.

The functional approach suggested that the purpose of substantive norms should influence choice-of-law decisions, fairness and predictability must be balanced and state regulatory interests may justify deviations from strict localization. This reorientation introduced a degree of flexibility into German PIL while maintaining systematic rigor [13, p. 740].

Modern German doctrine increasingly recognizes party autonomy as a central principle in contractual relations. The freedom of parties to choose the applicable law has become a cornerstone of European PIL, particularly under the Rome I Regulation. This development illustrates the transition from rigid territorialism to regulatory pluralism.

The integration of European Union law has fundamentally reshaped national systems of PIL. Key legislative instruments include: Regulation (EU) 593/2008 (Rome I) [10],

Regulation (EC) 864/2007 (Rome II) [11], Regulation (EU) 1215/2012 (Brussels I Recast) [12]. These instruments have harmonized significant areas of jurisdiction and choice-of-law rules, reducing fragmentation across Member States.

German legal scholarship has actively contributed to the interpretation and development of these regulations, ensuring doctrinal continuity while adapting to supranational governance structures.

Recent scholarship highlights several emerging tendencies: increased reliance on flexible connecting factors, growing importance of overriding mandatory provisions, interaction between human rights law and conflict-of-laws principles, digitalization and cross-border online transactions. Moreover, globalization has intensified dialogue between European and non-European conflict-of-laws systems, leading to a more transnational perspective.

The structural principles of German PIL have significantly influenced legislative reforms in Eastern Europe, including Ukraine. Concepts such as the “closest connection” principle and structured categorization of conflict rules demonstrate the enduring impact of German scholarship [9].

Conclusions. Thus, the evolution of PIL demonstrates a gradual transition from the classical model of neutral conflict-of-laws regulation to a modern multilevel and normatively sensitive approach. A decisive influence on the formation of classical doctrine was exerted by the theory of Friedrich Carl von Savigny, who laid the foundations of the localization approach, according to which every private legal relationship possesses its own “seat” and should be governed by the legal order with which it is most closely connected. The system of bilateral conflict-of-laws rules proposed by Savigny established a universal methodology for determining the applicable law and became the cornerstone of modern conflict of laws.

At the same time, the development of international commerce, social regulation, and the constitutionalization of private law revealed the limitations of a purely formal approach to the localization of legal relationships. Contemporary PIL increasingly takes into account the substantive consequences of the choice of applicable law, the necessity of protecting weaker parties, and the principles of legal certainty, predictability, and the balance between private and public interests. An important role in this transformation has been played by European integration and the harmonization of conflict-of-laws regulation within the European Union, which contributed to the emergence of a supranational and multilevel legal order.

Consequently, modern PIL does not reject Savigny’s classical legacy but rather adapts it to the conditions of an increasingly globalized legal environment. While preserving the fundamental principles of localization and the search for the closest connection, contemporary conflict-of-laws methodology combines party autonomy, flexible connecting factors, constitutional values, and mechanisms of transnational coordination, thereby ensuring a balance between legal certainty and justice in the regulation of cross-border private legal relations.

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