

Legal Pluralism and Efficiency in International Marriage Law: Implications of Regulatory Competition on an Analysis of Conflict of Law Rules

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Abstract : The existence of different legal systems represents an important barrier for married couples that attempt to reside in another country. Each movement can cause important changes in the rights and obligations derived from the marriage since a different law could be used by the courts to solve legal disputes arising from their relationship. In a context in which it is increasingly common to move from one country to another, people cannot be certain about the outcomes of proceedings dealing with i.e., the dissolution of property regime, maintenance payments or time to wait to initiate divorce because a foreign – and in most cases unknown – law could apply every time they move. At first glance, the answer to this issue seems to be the harmonization of the legal systems: the greater the mobility of individuals inside a group of countries, the higher the similarities of their laws should be. Such a solution could be positive for spouses because a higher degree of legal certainty would be reached in case the same legal rules applied regardless of the place where the couple lives. However, the legal pluralism brings with it also advantages that could be appreciated when one looks closely at the economic rationale behind the legal institution of marriage. This contribution carries out an economic analysis of the existence of different legal systems in the area of marriage law and proposes another strategy to cope with the problems arising from legal pluralism. Far from eliminating the diversity of legal systems, one wishes to foster it, since significant advantages could arise from such diversity in case couples are permitted to choose the applicable law themselves. Based on the idea that the law could be seen as a product offered in the market as well as states and spouses as suppliers and consumers of this product, the paper shows the advantages of designing a legal framework that allows spouses to determine freely the law governing the legal effects of their marriage. Instead of promoting the harmonization of the substantive law, one explores the benefits of encouraging the regulatory competition at international level in the area of marriage law.

Keywords : conflict of laws, harmonization, international marriage law, law and economics, regulatory competition

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