

New Direction in Choice of Law: Alternatives to Interest Analysis

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INTRODUCTION

New Directions in Choice of Law: Alternatives to Interest Analysis

The past three decades have witnessed what enthusiasts and detractors alike have come to call a “revolution” in choice of law in the United States.¹ Long dominant throughout the various states, the traditional methodology of place of wrong, place of making, and the like has yielded considerable ground in state courts to a variety of modern approaches.² Fundamental to these various approaches is a method that Brainerd Currie, its principal architect, called “governmental interest analysis.”³

Not surprisingly in light of its “revolutionary” impact on judicial practice, governmental interest analysis has been the focal point of scholarly debate in choice of law since Currie launched it with a remarkable flurry of articles in the late 1950s and early 1960s.⁴ Its merits and demerits have been hotly contested in numerous articles and more than

* Chair, AALS Section on Conflict of Laws, 1990-91; Professor of Law, Cornell Law School. On behalf of all the contributors to this symposium, I thank the editors of this Journal for their efforts to help ensure the symposium’s success. I am especially grateful to John Feldman, last year’s editor-in-chief, for the enthusiasm and speed with which he responded to my invitation to publish the symposium, and Perry Nagle and David Gibson of the current board for their skill and good humor in moving the symposium along to final publication. Special thanks also go to Courtland Peterson of The University of Colorado School of Law, my predecessor as Section chair, for his helpful advice about organizing a Section program.

1. See, e.g., Korn, *The Choice-of-Law Revolution: A Critique*, 83 COLUM. L. REV. 772 (1983); Sedler, *The Governmental Interest Approach to Choice of Law: An Analysis and a Reformulation*, 25 UCLA L. REV. 181, 181 (1977).

2. The traditional rules have hardly disappeared entirely from the scene, particularly with regard to matters other than contract and tort. Nonetheless, the inroads made by modern approaches are quite impressive. For an overview of the states’ approaches, see G. SIMSON, *ISSUES AND PERSPECTIVES IN CONFLICT OF LAWS: CASES AND MATERIALS* 13-14 (2d ed. 1991).

3. See generally B. CURRIE, *SELECTED ESSAYS ON THE CONFLICT OF LAWS* (1963).

4. See *id.*

a few symposia.⁵ With no intention of suggesting that further debate on governmental interest analysis might not bear additional fruit, I and the other officers for 1990-91 of the Association of American Law Schools Section on Conflict of Laws resolved to try to broaden the focus of conflicts debate by having the speakers at the Section's annual program respond to the question: if Currie's interest analysis is not the answer, then what is?

The Section had the very good fortune of securing as speakers three conflicts scholars who, I believe, would appear at or near the top of almost any conflicts teacher's list of scholars best-suited to answer this question—R. Lea Brilmayer of Yale Law School, Larry B. Kramer of The University of Chicago Law School, and Joseph W. Singer of Boston University School of Law. The program, which took place in Washington, D.C. on January 5, 1991, was unusually well-attended and (at least from the perspective of this far from disinterested moderator and Section chair) very well-received. The first three contributions to this symposium are somewhat revised versions of the papers delivered by Professors Brilmayer, Kramer, and Singer. The fourth and final contribution is an essay that I have written at the invitation of the editors of this Journal, some of whom have had the dubious honor of hearing me outline an alternative approach at the conclusion of the choice-of-law materials in my conflict of laws course. My essay is not intended to be a "response" to the three papers, but rather an effort of the same kind.

5. For an excellent symposium and plentiful source of citations to the literature on interest analysis, see *Symposium on Interest Analysis in Conflict of Laws: An Inquiry into Fundamentals with a Side Glance at Products Liability*, 46 OHIO ST. L.J. 457 (1985).