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By ROBERT A. SEDLER

I will limit my comments to the essential disagreement that I have with the positions taken by Professor Trautman and Dean Hay.[1] My essential disagreement with Professor Trautman is over the significance of *multistate policies* in the choice-of-law process. Professor Trautman attaches great significance to multistate policies and correctly states that they play a small role "in the elaboration of [Professor Currie's] theories by him and his successors."[2] His objection to the application of the forum's law in the case of the true conflict, as advocated by Professor Currie and me, is on the ground that this solution necessarily ignores multistate policies. As he states:

> [I]n cases of conflict, the forum . . . should apply its own law. The purposes and policies to be advanced are then not viewed from a multistate perspective, but from an arbitrarily limited and parochial focus. As a result, there is a failure to advance some of the purposes and policies at stake. The decision to apply forum law thus ultimately defeats both goals I have stated; in addition it seems impermissible and essentially lawless in a multistate society.[3]

Our disagreement over the significance of multistate policies in the choice-of-law policies reflects a more basic disagreement over the function of a court in a conflicts case. I do not think that this function is that of "policing the interstate and international legal order" or of subordinating the policy underlying a rule of substan-

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1. Dean Hay has correctly pointed out the inaccuracy of my previous statement in regard to the constitutionality of the application of a state's law when that state could not constitutionally exercise jurisdiction under a long-arm statute. Hay, *Reflections on Conflict of Laws Methodology*, 32 HASTINGS L.J. 1644, 1648 (1981). I have corrected the statement in the present writing. *See* Sedler, *Reflections on Conflict-of-Laws Methodology*, 32 HASTINGS L.J. 1628, 1642 n.6 (1981).

2. Trautman, *Reflections on Conflict-of-Laws Methodology*, 32 HASTINGS L.J. 1628, 1642 n.6 (1981).

3. *Id.*

tive law in favor of supposed multistate policies.[4] The courts do not think that this is their function either, and in practice will not subordinate the forum state's real interest in favor of multistate policies.[5] I do not consider it "lawless in a multistate society" for the forum to apply its own law whenever the forum state has a real interest in doing so in order to implement the policy reflected in that law. I would further submit that in practice, the application of the forum's law on this basis generally produces results that are functionally sound and fair to the parties.[6] Because Professor Trautman and I disagree as to the proper function of a court in a conflicts case, our positions as to choice of law in the case of the true conflict are necessarily irreconcilable.[7]

The disagreement between Dean Hay and me is even more fundamental. Dean Hay is very distressed with the present state of conflicts law because of the apparent lack of concern for "conflicts justice" and with the "integrity of the system."[8] He advocates the formulation of "new principled rules" to govern choice-of-law decisions and maintains that the formulation of such rules is necessary to advance "conflicts justice" and the "integrity of the system."[9]

The fundamental disagreement between Dean Hay and me is over the present state of conflicts law. Unlike Dean Hay, I think it is quite good. I contend that on the whole the courts have reached functionally sound and fair results in the cases coming before them for decision.[10] I think that choice of law, particularly in the interstate context,[11] need not be all that complex[12] and would further

4. *See* Sedler, *The Governmental Interest Approach to Choice of Law: An Analysis and a Reformulation*, 25 U.C.L.A. L. REV. 181, 218-20 (1977).

5. *Id.* at 231-33.

6. *Id.* at 227-31.

7. In the matter of the proper resolution of the unprovided for case, however, we come out the same way, although we take different routes. *Compare* Trautman, *Rule or Reason in Choice of Law: A Comment on Neumeier*, 1 VT. L. REV. 1, 18-19 (1976) *with* Sedler, *The Governmental Interest Approach to Choice of Law: An Analysis and a Reformulation*, 25 U.C.L.A. L. REV. 181, 233-36 (1977).

8. Hay, *Reflections on Conflict of Laws Methodology*, 32 HASTINGS L.J. 1644, 1661-62 (1981) (emphasis omitted).

9. *Id.* at 1661-66.

10. See note 6 *supra*. *See also* Sedler, *On Choice of Law and the Great Quest: A Critique of Special Multistate Solutions to Choice-of-Law Problems*, 7 HOFSTRA L. REV. 807, 807-12 (1979).

11. The overwhelming majority of conflicts cases coming before American courts for decision are interstate cases. Conflicts law in this country, therefore, has developed with reference to the interstate case. International cases are accommodated within the frame-

submit that it is the simplifying effect of interest analysis that has enabled the courts to reach functionally sound and fair results in the cases coming before them for decision.[13]

If I am correct in my assertion that in practice the courts generally do reach functionally sound and fair results, then perhaps the inquiry should focus on what it is that the courts are doing and on why it is that they are reaching these results. Stated simply, we might be better off if we were more concerned with the question of "what is the proper result" instead of "what is the proper rationale." I do not believe that the proponents of "new solutions" can demonstrate that the present state of conflicts law, as reflected by the results the courts reach in practice, is truly "distressed."[14] Thus, I continue to be skeptical about the "need for change."

work established for interstate cases, but relevant differences will be taken into account by the court.

12. *See* Sedler, *Reflections on Conflict-of-Laws Methodology*, 32 HASTINGS L.J. 1628, 1629 (1981).

13. *See id.* at 1631-35.

14. As Professor Leflar has observed: "The fact is that most American courts today are moving to what they call the new law of conflict of laws. It is a conglomerate, and not a bad one. In terms of location, this body of law is being lifted up by the courts to a well-watered plateau high above the sinkhole it once occupied. No location lasts forever, and there are vistas beyond the plateau, but it is a rest-stop for now." Leflar, *Choice of Law: A Well-Watered Plateau*, 41 LAW & CONTEMP. PROB. 10, 26 (1977).