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Introduction

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SYMPOSIUM: CONFLICT-OF-LAWS
THEORY AFTER ALLSTATE INSURANCE CO. V. HAGUE

INTRODUCTION

David F. Cavers*

Though recourse by legal scholars to the symposium as a collective art form is not confined to adepts in conflict of laws, our disputatious fraternity has been especially given to focusing its symposiums on single cases. The earliest instance of this that I recall was the garland of six rather compact comments inspired by Babcock v. Jackson which the foresighted editors of the Columbia Law Review gathered for publication in 1963. Much cited, it revealed the emerging diversity of theories the authors advanced to explain and justify that decision.

The next scholarly assemblage came in response to Reich v. Purcell, brought together nearly five years after Babcock by the editors of the U.C.L.A. Law Review. They outdid the Columbia pioneers, recruiting not six but twelve commentators who produced, in the aggregate, more than twice as many pages as the Babcock symposium had yielded. In terms of numbers, the Reich constellation has not been exceeded, but the authors of the seven conflicts symposiums

3. 67 Cal. 2d 551, 432 P.2d 727, 63 Cal. Rptr. 31 (1967).
on single cases that, by my count, have since appeared5 have tended to expand their several contributions to article length. As the present symposium demonstrates, the product can be formidable.

One can readily sympathize with the contributor to this symposium who, while looking forward to a day of simpler conflicts rules, saw as "the grim alternative" to that achievement "the need for more symposiums." Yet perhaps the grim alternative of more case-focused symposiums will increase the chance that American conflicts scholars can be aided in clarifying and narrowing their areas of disagreement simply because all their writings are not scattered over as many topics and periodicals as there are writers.

In this instance, the case offering this opportunity is Allstate Insurance Co. v. Hague.7 In Hague, the Supreme Court reviewed a decision by the Minnesota Supreme Court8 resolutely applying Minnesota insurance law to a claim based on an automobile insurance policy issued in Wisconsin to a Wisconsin insured killed in a Wisconsin accident. The plurality opinion relied on an aggregation of contacts with Minnesota: the commuting insured's long employment there, his insurer's important business in the state, and his widow's move after his death to Minnesota where she qualified as executor of his will and plaintiff in this case.9

I believe an astute and patient reader can discern among the nine contributions to this symposium certain clusters of related opinions. Possibly aided by the juxtaposition of the authors' views, a duly qualified glossarist could identify at least three approaches to the constitutional problem that the Supreme Court in Hague sought to resolve. This possibility is advanced, moreover, by the concern in Hague with constitutional bounds, and not with weighing the relative merits of competing choices of law or measuring the length of a long

arm's reach. And, thanks to the differences within the Hague court, its three opinions have not frozen the process of doctrinal clarification by prescribing definitive, unyielding formulas.

This introduction shall not attempt the ambitious analytical enterprise I should like to see undertaken. Long a vendor of choice-of-law theories, I should quite properly be distrusted by contributors and readers alike. I shall, therefore, undertake merely the function of guide, helping readers to decide what to anticipate as they proceed, by routes of their own choosing, from one author to another. I must add, however, that my comments, like those of most guides, are not only subjective but will tend to stress the obvious. I can assure the reader that each article has values which, in this prefatory survey, I shall have been unable to point out.

The initial article by Professor Weintraub begins, as does the second article by Professors von Mehren and Trautman, by noting that if proper weight is given to the fact that all three policies under which Mrs. Hague claimed were issued by the same insurer, the laws of Minnesota and Wisconsin should not have been found to be in conflict. Discovering this, the Supreme Court could have withdrawn its writ of certiorari as improvidently granted, leaving to another day and a better case the business of illuminating constitutional restraints, if any, on the choice of law by state courts.

In the title of his contribution, Professor Weintraub asks, *Who's Afraid of Constitutional Limitations on Choice of Law?* For one, he is not. He views what some consider a menace with a certain degree of, shall I say, jauntiness. With an analysis paralleling Justice Stevens', Professor Weintraub contends that so long as the Supreme Court is content to strike down only the "'fundamentally unfair'" application of forum law as violative of due process and to require a showing of the need for "mandating a unifying national result under" the full faith and credit clause, the states will be permitted to decide cases on grounds which are, like Hague "'plainly unsound as a matter of normal conflicts law.'"

Professor Weintraub examines each of the three contacts that the plurality aggregated in support of their decision and finds only one sufficient to preserve the Minnesota decision from violating the due process clause: Mrs. Hague's post-occurrence Minnesota domicile. Professor Weintraub also considers Hague's relationship to problems of personal jurisdiction. Will "generally affiliating bases"
for judicial jurisdiction be abolished, curtailing forum preference? Professor Weintraub thinks they neither will nor should be. And while he sees Hague as placing the Court’s imprimatur on “the new choice-of-law methodology,” the case also indicates “how far we have to travel” and that “much more choice-of-law experimentation is needed.”

Concluding, as did Professor Weintraub, that the relevant insurance laws should not have been found to conflict, Professors von Mehren and Trautman, in their article entitled Constitutional Control of Choice of Law: Some Reflections on Hague, decline to acquiesce in the plurality’s grounds for upholding Minnesota’s application of its own law. Indeed, they condemn the decision as “unprincipled,” a charge that leads them to articulate the principles they believe should govern the choice-of-law process. Putting aside the systems of Story and Beale, they turn to the “instrumental methodology” that they find now dominant in the United States. They note that this calls for an issue-by-issue approach to choice of law; on this basis, they see the contacts relied on by the plurality in Hague as meriting the dissent’s characterization of them as “trivial.”

The authors, however, concede that the approach that seeks the “center of gravity” of an underlying transaction and so permits an aggregation of contacts to determine the governing law cannot be dismissed as applying an unconstitutional criterion for constitutionality. Indeed this, they find, was the criterion the plurality misapplied to the specific insurance issue in Hague. They conclude, however, that the “center of gravity” of the transaction in Hague was clearly in Wisconsin. The application of this test therefore yielded an unprincipled result, one which Justice Stevens, concurring, found tolerable only because he did not regard it as “fundamentally unfair.”

Professors von Mehren and Trautman think that the Court’s failure in Hague to subject choice of law to principled constitutional control has created a need for courts in conflicts cases either to keep deciding how much is too much or too little or, in self-defense, to tighten the rules of judicial jurisdiction over foreign corporations, itself a desirable reform. The authors suggest instead that an “evolutionary process” of small steps, with state courts participating, could create a regime wherein the constituent states, respecting their obligations of membership in a federal system, would favor their residents only on a principled basis, refusing, except for “compelling
reasons," either to "depart from generally accepted or recognized norms of choice of law" or to "refuse to respect a claim for national uniformity" that had a recognized basis for its achievement.

More specific steps for attaining this goal are presented in a closing section of the article. Much reliance is placed on the wisdom of lower court judges in applying the standards the authors have outlined. Indeed, they note that a federal common law might emerge from this process, a body of law which could provide "floors or ceilings" on state conflicts law rather than supplant it.

A vigorous defender of the decision in Hague is Professor Sedler, surely the most prolific protagonist of the governmental-interest approach to choice of law since the late Brainerd Currie. As is indicated by the title of his contribution to this symposium, Constitutional Limitations on Choice of Law: The Perspective of Constitutional Generalism, he draws on his conception of our constitutional structure and principles of constitutional interpretation to place the due process and full faith and credit clauses in the constitutional scheme. He is led to conclude that Supreme Court abstention from the review of state choice-of-law decisions, in all but an occasional extreme case, is indicated both by the clauses' history and by "the broad, organic purpose" of these provisions.

Professor Sedler notes that the Supreme Court's involvement in the review of choice-of-law cases has paralleled the rise and fall of substantive due process, a rise exemplified for choice of law by New York Life Insurance Co. v. Dodge\(^\text{10}\) in 1918 and, for governmental economic regulation, by Lochner v. New York\(^\text{11}\) in 1905. He sees both the "Dodge era" and the "Lochner era" coming to an end with the Court's turnaround early in the New Deal, a change heralded for choice of law in 1935 by Alaska Packers Association v. Industrial Accident Commission\(^\text{12}\) and for regulation in 1934 by Nebbia v. New York.\(^\text{13}\) He finds parallels not only in the pattern of decisions but in the language of the Court's opinions. Viewed from this perspective, he sees "significant constitutional limitations on choice of law" as aberrational.

In stressing his view that limitations on state choice of law

\(^{10}\) 246 U.S. 357 (1918).
\(^{11}\) 198 U.S. 45 (1905).
\(^{12}\) 294 U.S. 532 (1935).
\(^{13}\) 291 U.S. 502 (1934).
should be "most minimal," Professor Sedler points to the "two-tier standard" of due process: Where a fundamental right is at stake, state action must be shown to advance a compelling governmental interest, there being no "less drastic means" available. If, however, no such right is involved, state action need be shown only to have a rational basis, reasonably related to the advancement of a legitimate governmental interest. Choice of law, he contends, comes under the second test, which was employed by both Justices Brennan and Stevens in their respective opinions in *Hague*. It is therefore enough that the forum's policy is advanced by its law, despite another state's greater interest.

Professor Sedler feels that the application of Minnesota law was fair and foreseeable; the key factor is Allstate's business in Minnesota, especially since its Wisconsin insurance contract was applicable to accidents in all fifty states. To demonstrate the reasonableness of resorting to Minnesota law, the author has drafted a supposititious Minnesota statute specifying in its provisions the basic facts in *Hague*. He believes a challenge to such a statute, based on due process, would clearly fail. The dissenters, Professor Sedler notes, ignored that the *Hague* decision is subject only to the rational basis test, which he contends was amply satisfied.

Professor Sedler points to two leading Supreme Court cases in which, in contrast to *Hague*, the application of forum law was struck down. *Home Insurance Co. v. Dick*¹⁴ and *John Hancock Mutual Insurance Co. v. Yates*¹⁵ illustrate for him state choices of law which were "'arbitrary' or 'unfair' under general due process doctrine." Of interest is Professor Sedler's argument in a hypothetical variation of *Yates* in which the insurer's defense is the insured's suicide (assumed to be a good defense under New York law but not under Georgia's). In this hypothetical case, as in *Hague*, the insurer's conduct would not have been different if the change of the plaintiff's residence to the Georgia forum had been foreseen; therefore the insurer suffered no fundamental unfairness.

Professor Sedler sees as rare the occasions to protect "federal interest in national unity," the function that Justice Stevens attributes to the full faith and credit clause. Moreover, the author questions the historical basis for extending this clause beyond its original function of assuring the recognition of the judgments of sister state

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¹⁴. 281 U.S. 397 (1930).
¹⁵. 299 U.S. 178 (1936).
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courts and legislative acts of insolvency. The clause's "broad, organic purpose" is to "promote equality among the states and respect for the sovereignty of each." An essential attribute of state sovereignty is, in his view, a state's power "to prescribe the controlling law in civil litigation." Quoting Pacific Employers Insurance Co. v. Industrial Accident Commission,16 he declares that "the very nature of the federal union of states . . . precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'"

Professor Sedler concludes that "there should not be any significant constitutional limitations on choice of law;" he appends a note that while most of his constitutional law colleagues will agree with him, he strongly suspects most of his conflict of laws colleagues will not.

On the heels of Professor Sedler's far-reaching defense of Hague comes a challenge from Professor Linda Silberman who asks: Can the State of Minnesota Bind the Nation: Federal Choice-of-Law Constraints After Allstate Insurance Co. v. Hague. She fears her question may be answered in the affirmative, leaving the federal system "unable to protect itself against state parochialism in the choice-of-law process." She finds the result in Hague "at sharp odds with the Court's recent ventures in the field of personal jurisdiction," which limited "extensions of a state's legal process."

Professor Silberman sees state parochialism emerging as a result of the forum's placing undue weight on its interest in its domiciled plaintiff for choice-of-law purposes. She argues—and this is the basic theme of her paper—that a person ought not to be subjected to liability unless his activity purposefully exposed him to the regime of law imposing it. Derived from constitutional cases on personal jurisdiction, this principle bears the polysyllabic label of "nonunilateralism."

There is greater need, Professor Silberman contends, for formal rules in choice of law than in judicial jurisdiction, given the substantive impact of the chosen rule as compared to only convenience factors in choice of forum. Moreover, in a number of choice-of-law cases seemingly based on the plaintiff's domicile, she finds a "focus

on the purposefulness of a particular party’s activity in relationship to the events in question,” a criterion sometimes satisfied by a relationship into which a party has entered.

Professor Silberman suggests that “not only should the purposefulness-as-consent criteria operate as a neutral principle of justice for deciding conflicts cases, but that it ought to be compelled as a matter of federal law.” She finds support for that proposal in the implications of a number of Supreme Court cases, and to implement it, she contemplates “a set of outer limits on state choice-of-law decisions, bearing to state choice of law much the same relationship as the rules developed in the negative commerce clause cases bear to state” laws touching on interstate commerce. The resulting decisions, subject to Congressional revision and rejection, would not displace the Klaxon doctrine\(^\text{17}\) except “at the extremes of state self-preference.” Once articulated, these common law rules would, of course, bind state as well as federal judges, but they would not alone be a basis for federal jurisdiction. The author believes “the generation of such a body of common law restraints would serve to restore integrity to the choice-of-law process.”

Efforts by commentators to identify the limits of a state’s power to apply its law to private disputes—the problem of legislative jurisdiction—have been hampered, in the view of Professor Martin, by “sporadic, uncoordinated” Supreme Court decisions. In his article entitled The Constitution and Legislative Jurisdiction, he notes that Professor Weintraub’s concept of “unfair surprise” is the most widely accepted limitation. He finds, however, that not only does this limitation fail to cover all the cases, but it encounters difficulties when a court applies a rule that is unfair only in light of its source.

By way of example, Professor Martin explains that the Texas statute applied in Dick was not unfair per se, but only when in application it overrode the fairness standards of “another sovereign, Mexico, which had an overwhelmingly better claim to regulate the transaction.” The result was a derivative unfairness. Dick was the victim of Texas’ unfairness to Mexico, but the problem was international and so beyond the range of the full faith and credit clause.

To cope with such cases, Professor Martin suggests a theory of federal common law founded on the supremacy clause and the fed-

eral foreign relations power. Moreover, he recants his past readiness
to deny the importance of determining which clause governs a legis-
lative jurisdictional problem. He now finds that the due process
clause was meant to regulate the relations between the individual
and the state and so, in controlling choice of law, should be limited
to unfair surprise cases. Cases involving considerations of federalism
must be based on the full faith and credit clause.

Left to the Supreme Court is “the task of proving a rational
system of constitutional limitations,” which “should be simple, ap-
peal to informed intuition and do minimum violence to established
case law.” Professor Martin finds these goals reflected in a test pro-
posed in a recent article by Professor Lea Brilmayer.18 She starts, as
Professor Martin notes, with a division of a state’s policies into do-
metric policies and multistate policies (those referring to state lines).
To create “a legitimate interest, which would justify application of
forum law,” a contact, she contends, must be “a person, event, or
item of property that domestic policy is intended to regulate”
(though the event may not always be specified in the state’s regula-
tory rule). Applying her test to the Minnesota employment of the
decedent in Hague, Professor Brilmayer finds no formal or informal
policy relevant to the cause of action.

Professor Martin applies the Brilmayer approach to the other
two Minnesota contacts in Hague, and, to give the theory “greater
predictive power,” he suggests certain modifications. To attempt at
this point to summarize Professor Martin’s summary and modifica-
tion of the theory is impracticable; indeed, after reviewing Professor
Martin’s analysis and suggestions, the reader may well wish to turn
to Professor Brilmayer’s own presentation.

Professor Martin finds room for hope for the future develop-
ment of a principled theory, since the plurality opinion “has so little
to say about doctrine.” He also derives hope from Justice Stevens’
opinion, especially his “emphasis upon undue interference with the
sovereignty of other states under the full faith and credit test.” Pro-
fessor Martin concludes with a rather wistful plea for “a majority
opinion with clearer rules, and perhaps even a case that does not
involve an insurance company.” I have already revealed the “grim
alternative” he sees confronting us if that plea goes unanswered:
more symposiums.

18. Brilmayer, Legitimate Interests in Multistate Problems: As Between State and
Academic restraint has failed to contain the feelings building up in Professor Twerski, a confessed territorialist. In his article, *On Territoriality and Sovereignty: System Shock and Constitutional Choice of Law*, he contends that Conflict of Laws, "one of the most intellectually exciting areas of the law," has been turned into "an arid wasteland." He finds the courts treating the subject "in a cavalier fashion," with interest analysis becoming "an affront to the important jurisprudential problems which underlie choice of law and an insult to the political structure of federalism."

Hope for a restoration of the subject's "honor and dignity" had been stirred in Professor Twerski by the Supreme Court's decisions in *World-Wide Volkswagen Corp. v. Woodson*¹⁹ and *Rush v. Savchuk*,²⁰ then dampened when he found that the Court in *Hague* "capitulated to unrestrained state chauvinism," perhaps because the Court "did not believe that any of the analytical tools available for resolving the problem were capable of curbing the excesses in the numerous choice-of-law approaches in vogue today." Hence his title.

After presenting what he terms "a territorial view of the facts" in *Hague*, Professor Twerski illustrates with a hypothetical case the proposition that litigation-breeding events may take place in one state and yet, by coincidence—for example, the common domicile of away-from-home parties—the actual harm resulting from the defendant's behavior is in time registered back in the plaintiff's home state. Yet a dispute, he insists, "does not change from local to interstate in nature merely because effects will be felt in other jurisdictions;" indeed, "some cases are so heavily centered in one jurisdiction that they never lose their essentially local character." Otherwise, "all cases become potential conflicts cases."

Contending that "[the] presumption is clearly in favor of the territorial result," Professor Twerski presents a hypothetical case which, he recognizes, bears a striking factual resemblance to *Tooker v. Lopez*,²¹ a New York case applying New York law to a fatal Michigan auto accident involving New York residents attending a Michigan university. To him, *Tooker* "presents the spectacle of two individuals who meet for the first time in Michigan and form a temporary government in exile for the purpose of avoiding the Michigan host-guest statute." The result of such a case is "sovereign shock."

Professor Twerski cites the Brilmayer article as providing a

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method of testing the sufficiency of state interest relied on to support the application of forum law. Her contention that no connection existed between the insured's employment and Minnesota's anti-stacking policy satisfies him of "the invalidity of Minnesota's employment interest in Hague." Professor Twerski, however, ultimately finds her analysis unsatisfactory in its insistence that multistate policies be related to domestic regulatory policies.

Whether this difference represents a false conflict or a true one is, again, a matter that cannot be resolved in this introductory essay; clarification of concepts seems necessary. The same comment may, I believe, be directed to the doubt Professor Twerski expresses concerning the adequacy of Professor Silberman's emphasis on "purposefulness . . . in relationship to the events in question" as a "test for constitutional choice of law." Turning in conclusion to his own territorial approach, Professor Twerski declares that Hague has persuaded him that that "approach to choice of law has constitutional dimensions."

In A Legislator's Look at Hague and Choice of Law, Professor Davies, who for over a score of years has served in the Minnesota Senate, has launched as spirited an attack on Hague and defense of the territorial principle as did Professor Twerski in the preceding article. His immediate target, however, is the Minnesota Supreme Court, before whom Professor Davies appeared as amicus curiae (pro bono) in the Hague case. He declares that "no jurisdiction has more consistently contributed to the fallacy of non-territorial conflicts law than the state of Minnesota," citing eleven cases, the earliest in 1966, to bear witness to his complaint.

Professor Davies complains with equal vigor, however, of the commentators whose "new learning assaults territoriality," a concept he sees as descriptive of "the reality that choice-of-law problems arise because governments hold exclusive policymaking sovereignty over delimited segments of the earth's surface." His "primary purpose" in writing "is to aid those who seek to rehabilitate the idea of territoriality."

Professor Davies reports a continual awareness among state legislators (in contrast to state judges) of the significance of "state lines as boundaries to their authority," a proposition that he sees as equally applicable to the judiciary. Indeed, he submits that no bill attempting to codify the decision in Hague could pass scrutiny by
the committees of any legislature. Moreover, he contends that if a legal rule would be discriminatory as a statute, it is discriminatory as a court judgment, a position he later develops in a footnote by arguing that "the equal protection clause and the privileges and immunities clause provide not only a more focused constitutional inquiry but also offer a more appropriate common law framework to solve choice-of-law issues."

As an example of the feasibility of legislative enactment of "generalized rules on the interstate reach of automobile insurance law," Professor Davies reports that the Minnesota legislature had dealt with the territorial applicability of Minnesota's No-Fault Insurance Act (effective just six months after the Hague accident). He reveals a number of provisions in which problems of territorial applicability were dealt with and then identifies a number of other Minnesota auto insurance statutes posing similar problems. He adds that "[n]ot one legislative rule of insurance regulation is made applicable to nonresident motorists operating vehicles outside the state of Minnesota."

Professor Davies characterizes as "quixotic" Professor Sedler's view that legislative silence represents an absence of legislative policy. The auto insurance provisions Professor Davies cites are in contrast to most drafts of bills because, given the criminal sanctions of the former, it was not sufficient to incorporate the state map, as he contends is done by implication in all statutes. He goes on to complain that judicial failure to consider the relevance or legal significance of contacts results in an aggregation of irrelevancies. By rejecting territoriality for "an unstructured pursuit of public policy," scholarly conflicts writing has, in his view, had the "unintended effect" of causing "the law to stumble into a new mechanical jurisprudence" in which residence and forum "seem now to be . . . looked to as thoughtlessly as was the lex loci of the first Restatement."

Professor Davies believes we must return to the "passe 'traditional approach' of locating territorially a relevant event or thing," and he considers it essential that relevance be determined issue-by-issue rather than case-by-case. Though he dislikes the term, he sees dèpeçage as "essential to a realistic, predictable choice-of-law process." He notes, moreover, that legislators concur in his view of law,

22. Professor Davies suggests "that each choice-of-law case can be tested by trial codification." Interestingly, Professor Sedler places in bill form the facts of Hague to demonstrate the constitutional validity of the choice-of-law decision reached by the Minnesota Supreme Court.
and find it "reasonable to draw the rules regulating the cluster of relationships involved in a legal 'situation'" from a variety of sources. In contrast, choice of law has been seen in terms of litigation, with courts seeking the one jurisdiction from which the substantive law of the case is to be drawn. He observes a belated but growing realization that the choice-of-law process must focus on rules for each separate issue in a case, thus permitting territorial principles to be applied "in a nonmechanical way."

Professor Davies also devotes a section of his article to demonstrating Hague's discriminatory effect, an issue that Allstate, "with a strong due process argument," did not urge. To show the discriminatory effect of applying Minnesota law, he presents a series of cases, each paralleling Hague in all respects save one. Thus, in one of these parallel cases, the widow refused to move to Minnesota; in a second, the insured had worked only in Wisconsin; in a third, the widow had moved to Minnesota from distant Milwaukee, and so on. Professor Davies believes all these cases should be decided alike, but he assumes the Hague Court would discriminate. No legislature, he declares, would authorize such discriminatory rulings.

In a final summarizing section, Professor Davies proposes that our courts should apply Savigny's "seat of the relationship" approach to choice of law on an issue-by-issue basis. Rather than risk diluting the reader's curiosity, I shall not attempt to summarize that proposal.

A constitutional evaluation of a Supreme Court choice-of-law decision (the first in nearly seventeen years) by the reporter of the second Restatement of Conflict of Laws is a matter of special interest. In Professor Reese's article, The Hague Case: An Opportunity Lost, he joins with Justice Powell in agreeing "essentially with the basic principles announced by the Court." But also like Justice Powell, Professor Reese "cavil[s] at the way these principles were applied and at the result that was reached."

The Court's resolution of the fairness issue under the due process clause does not trouble Professor Reese. The application of the Minnesota stacking rule was not unfair to Allstate since "Allstate can be presumed to have been aware that the insured would drive his

automobiles into Minnesota," where stacking is permitted. Yet, while accepting the plurality's resolution of the fairness issue, Professor Reese finds this issue “quite irrelevant to the question” whether Minnesota's application of its own law went “beyond the proper scope of its legislative competence and in a way that was inimical to the interests of our federal system.”

Justice Stevens’ conclusion that Minnesota had not threatened the federal interest in national unity rests on the ground that, in contracting with Mr. Hague, Allstate had not relied on the application of Wisconsin law. Professor Reese finds this conclusion irrelevant to the question whether Minnesota had violated Justice Stevens’ own standard.

Justice Brennan’s justification of the application of Minnesota law rested on Minnesota’s interest, which rested in turn on the aggregation of Minnesota’s three contacts with the case. But Professor Reese finds Allstate’s Minnesota business “of dubious significance” and warns that “attaching weight to Mrs. Hague’s [post-occurrence] acquisition of a Minnesota domicile . . . bids fair to open Pandora’s box.” Professor Reese fears that this “dangerous precedent” will encourage forum-shopping and will erode the long-standing authority of John Hancock Mutual Life Insurance Company v. Yates,24 a case also involving an allegedly forum-shopping widow.

Finally, basing a Minnesota interest on Mr. Hague’s Minnesota employment leads Professor Reese to ask “whether ‘state interest,’ without further qualification, is a term that can usefully be employed in determining the propriety of a state’s choice of law.” He concludes that a state’s interest “should be assessed in light of the policy, or policies, which the rule was designed to serve.” So regarded, he finds Minnesota’s interest in applying its stacking rule as “tenuous indeed.”

In making “fairness to the parties the predominant, if not the only, value,” the Supreme Court, Professor Reese believes, has departed from the “federal-system values” it has recently stressed in state jurisdiction cases. And, Professor Reese notes, “a state’s interests are more likely to be affected by the application of a foreign law to determine the rights of the parties than when the court of another state simply entertains the case.” Given these considerations, Hague seems to him “an opportunity lost” and a “backward step in the development of constitutional control of choice of law.”

A scholar whose identification of five choice-influencing considerations has influenced choice-of-law decisions in many courts, Professor Leflar directs his article, *Choice of Law: States' Rights*, first to analyzing the three Supreme Court Justices' opinions in *Hague* and then to speculating how state courts would today decide a case like *Hague*.

Professor Leflar's analysis of the three opinions rendered in *Hague* does not differ from most of those already reported. He does emphasize the proposition that "we now know more than we knew before." He sees the leeway afforded by the Court, dissenters included, as more extensive than it once was thought to be and observes that "the state courts, in making their choices of law, are free to take into account some formerly doubtful factors." He finds the Court's even split on whether "post-event occurrences" could be "included among the significant aggregation of contacts of other factors required for constitutionality" especially important. He reports that five Justices agreed that, if sufficient factors are present to sustain constitutionality, post-event occurrences may be then weighed in determining the law to be applied.

Since the Court's criteria for constitutionality permit considerable diversity in state choices of law, Professor Leflar turns to the question noted above: How would post-*Hague* courts make their choices of law in cases like *Hague*, given the degree of freedom now afforded them (assuming the Wisconsin statute changing the state's no-stacking rule had not become effective)? I shall report Professor Leflar's surmises as to decisions, not their rationales: A Bealian court would apply Wisconsin law. Courts taking Brainerd Currie's governmental interest approach would doubtless reach the same result as did the Minnesota court. Few courts faithful to the second *Restatement*, however, would follow Minnesota's lead. A New York court would apply New York law. A court in Wisconsin—a state devoted to Professor Leflar's five choice-influencing considerations—might still be in a state of suspended judgment when it reached the "fifth consideration, a preference for application of the better rule of law." By this time, however, Wisconsin would have shown that it regarded the Minnesota rule as the better law and would therefore probably choose it. Of course, Minnesota would adhere to its previous decision—but unanimously.

How would a "disinterested third state" rule? Professor Leflar has his solution, but I leave that question to the reader.
The symposium has been directed to both the present and future implications of Hague. It may, however, be appropriate to close this introduction with a backward look. In 1926 I received, in an editorial capacity, a manuscript submitted to the Harvard Law Review by Professor E. Merrick Dodd, Jr., then of the University of Nebraska College of Law, later a colleague at Harvard. The article, entitled The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws, makes interesting reading today. Professor Dodd first examines the competing theories of choice of law, to which the "local law" theory had recently been added, then analyzes the bases for invoking the due process and full faith and credit clauses, reviews the relevant Supreme Court decisions (all antedating Dick), and finally draws certain conclusions. I shall quote the first and last sentences from that final section. Professor Dodd wrote:

It appears, then, that the Supreme Court has quite definitely committed itself to a program of making itself, to some extent, a tribunal for bringing about uniformity in the field of conflicts, both with reference to the law which should be regarded as applicable and to the proper field for considerations of local policy, although the precise circumstances under which it will regard itself as having jurisdiction for this purpose are far from clear. . . .

It therefore remains to be seen whether the Supreme Court can find a way to continue the work which it has begun by introducing some degree of uniformity into the decisions on important questions of conflict of laws without burdening itself with a flood of unimportant litigation.

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25. 39 Harv. L. Rev. 533 (1926).
26. Id. at 560.
27. Id. at 562.