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Diversity Jurisdiction: A Symposium

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NOTES

DIVERSITY JURISDICTION: A SYMPOSIUM

The three student notes and statistical appendix which make up this symposium attempt to investigate and analyze some of the fundamental problems of diversity jurisdiction: its constitutional basis, the ascertainment of state law in diversity cases, and the impact of federal diversity decisions on the growth and development of state law. While these problems are inherent in a federal system which allows diversity jurisdiction, as practical considerations they have been given immediacy by the current proposals of the American Law Institute to alter substantially the statutory structure of federal diversity jurisdiction.¹

The Institute's proposals result from what is probably the most thorough study of diversity jurisdiction in recent years. The study grew out of a suggestion by Chief Justice Warren at the Institute's 1959 meeting that it undertake a comprehensive investigation of jurisdiction in the federal courts. The suggestion was promptly, if not enthusiastically, accepted by the Institute and under the financing of a Ford Foundation grant is still being carried on. It is clear that the fundamental reason which caused Chief Justice Warren to make his suggestion is the congestion and delay which plague the federal courts' dockets.² What has been needed is an overall plan to modernize the administration of the federal courts so that they can meet the contemporary needs of a litigious nation; and the Institute committee's original mandate was to lighten the burden of the federal courts. For reasons which, although they probably are good, have never been explained, the committee did not approve of the obvious, if somewhat crude, solutions to the problem: to reduce and stabilize the case load or to increase the number of courts or to do both in combination. Instead, the committee's basic impulse was to approach its problem in the spirit of a constitution-maker and create an instrument, even if a minor one, of government. The resulting proposal is a compromise between the committee's original mandate and its basic impulse. It has attempted to devise a theoretical model as to just what diversity jurisdiction should be like and to prescribe a statutory scheme to fit that model. It starts out with a theoretical premise which appears to be independent

1. See A. L. I., *STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS*, (TEN. DRAFT No. 2, 1964).

2. See the reported address of Chief Justice Warren to the Institute's 1959 annual meeting in 27 U.S.L. WEEK 2598 (1959).

of administrative considerations but which can be manipulated so that its implementation happily results in approximately a fifty per cent reduction in the federal diversity case load. The theoretical premise is not at all difficult to locate in the Institute's thinking:

[A]ccess to the federal courts because of the diversity of citizenship of the parties should be permitted only upon a showing of strong reasons therefor and only to the extent that these reasons justify. This premise is grounded upon the political axiom, advanced by Hamilton in justification of the federal judicial power, that judicial and legislative authority should be coextensive. So long as federal courts continue to decide cases arising under State law without the possibility of State review, the State's judicial power is less extensive than its legislative power; this is an undesirable interference with State autonomy.³

However, as it is expressed this premise has some gaping holes in it: what the Institute considers to be included in the concept of "state autonomy," how state autonomy is being interfered with, or why this interference is undesirable are never explained. But perhaps the most striking defect in the premise is that it bears no obvious relationship at all to the initial motive for the study—the need for more efficient administration in the federal courts.

It is hoped that the studies made in this symposium will be relevant in evaluating both the theoretical validity of this premise and the practical usefulness of the Institute's proposals.