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COMMENT

Methodological Stare Decisis and Intersystemic Statutory Interpretation in the Choice-of-Law Context

When a state court determines that it must apply the statute of a sister state, what statutory interpretation methodology should the court use to interpret that statute? Is the forum court free to apply its own rules of statutory construction, or should it apply those of the sister state?

This question of interpretive methodology is particularly significant because many states give law-like status to methodology through legislated rules of interpretation[1] and judicial interpretive frameworks[2]—a practice that scholars have termed "methodological stare decisis."[3] Commentators have focused on courts' interpretations of their own state's statutes, but an emerging area of scholarship analyzes statutory interpretation methodology from an "intersystemic" perspective. Abbe Gluck has examined how state and federal courts apply one another's interpretive methodologies when interpreting one another's

1. Jacob Scott, *Codified Canons and the Common Law of Interpretation*, 98 GEO. L.J. 341 (2010) (documenting legislated interpretive rules in all fifty states).

2. Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1754 (2010) ("Several state courts have implemented formalistic interpretive frameworks that govern all statutory questions.").

3. A growing body of literature describes this practice of "methodological stare decisis," through which state courts accord precedential effect to judicial statements concerning methodology of statutory construction. *See*, *e.g.*, Gluck, *supra* note 2, at 1754; Jack L. Landau, *Oregon as a Laboratory of Statutory Interpretation*, 47 WILLAMETTE L. REV. 563, 564 (2011) (quoting Gluck, *supra* note 2, at 1754); Alexander I. Platt, *Debiasing Statutory Interpretation*, 39 OHIO N.U. L. REV. 275, 282-85 (2012). Granted there are variations across states, *see*, *e.g.*, Gluck, *supra* note 2, at 1785-97 (describing Connecticut's legislature-court power struggles over interpretive rules), and the practice lacks theoretical consensus, *compare* Sydney Foster, *Should Courts Give Stare Decisis Effect to Statutory Interpretation Methodology?*, 96 GEO. L.J. 1863, 1884-90 (2008), *with* Evan J. Criddle & Glen Staszewksi, *Against Methodological Stare Decisis*, 102 GEO. L.J. 1573 (2014). But still, there is a growing awareness of the important potential for, not to mention the actual application of, stare decisis for methodology.

statutes,[4] and Nicholas McLean has recently considered the status of foreign interpretive methodologies in federal court cases construing foreign statutes.[5] Intersystemic statutory interpretation in the interstate choice-of-law context, however, remains unexplored. The choice-of-law literature has also neglected this issue, focusing almost exclusively on the question of what substantive law to apply rather than the question of how to apply it.[6]

This Comment introduces an intersystemic analysis of statutory interpretation in multistate cases and offers the first examination of current practices among state courts. Part I provides background on choice-of-law principles and demonstrates that they do not provide guidance to courts on how to construe sister state statutes. Part II examines cases in which state courts interpret sister state statutes and argues that current practices are inconsistent and doctrinally unmoored. Part III argues that current ad hoc practices undermine the policies underlying choice-of-law doctrines and that courts should instead apply the interpretive methodology of the sister state whose statute is being construed.

I. THE LACK OF INTERPRETIVE GUIDANCE IN CHOICE-OF-LAW PRINCIPLES

State courts routinely apply the statutes of other states.[7] While the forum court generally applies its own procedural rules—such as those concerning the

4. Abbe R. Gluck, *Intersystemic Statutory Interpretation: Methodology as "Law" and the* Erie *Doctrine*, 120 YALE L.J. 1898 (2011).

5. Nicholas M. McLean, Comment, *Intersystemic Statutory Interpretation in Transnational Litigation*, 122 YALE L.J. 303 (2012).

6. Few conflict of laws scholars have addressed a state court's obligations when interpreting sister state law. *See* William B. Sohn, Note, *Supreme Court Review of Misconstructions of Sister State Law*, 98 VA. L. REV. 1861, 1861 & n.3 (2012). The few scholars addressing the issue have analyzed only the forum court's constitutional obligations to faithfully interpret the substance of sister state law, and not statutory interpretation methodology. *See* Michael Steven Green, *Horizontal* Erie *and the Presumption of Forum Law*, 109 MICH. L. REV. 1237 (2011); Note, *Misconstruction of Sister State Law in Conflict of Laws*, 12 STAN. L. REV. 653 (1960); Sohn, *supra*.

7. Because substantive laws differ from one state to another, cases involving parties or events in multiple states require the forum to determine which state's law governs the dispute. Multistate cases are a common part of state court dockets; in 2013, state supreme and intermediate courts decided 749 choice-of-law cases. Symeon C. Symeonides, *Choice of Law in the American Courts in 2013: Twenty-Seventh Annual Survey*, 62 AM. J. COMP. L. 223, 225 (2014). Because Westlaw only includes a very small number of trial court decisions, an accurate figure on the number of choice-of-law cases in state trial courts is unavailable. *Id.* at 225 n.5.

admissibility of evidence[8] and competency of witnesses[9]—choice-of-law principles determine what substantive law governs the case: that of the forum state or a sister state.[10]

As a preliminary matter, it should be noted that statutory interpretation methodology defies categorization as simply a procedural device to be governed by forum law. Unlike procedural rules that regulate the method of presenting facts to the court[11] and facilitate adjudication,[12] interpretive methodology is deeply tied to statutory meaning. Because statutes are merely "strings of words," statutory meaning is not inherent in the text but instead is derived from the interaction of the text and the interpretive process.[13] A state's underlying interpretive framework therefore has an inherently substantive foundation as it is "intimately bound up with" the legal right created by a statute.[14] Accordingly, a closer examination of choice-of-law doctrines concerning substantive law is necessary to understand how statutory interpretation methodology functions in multistate cases.

States have adopted a wide variety of choice-of-law methodologies to select the applicable substantive law in multistate cases. Despite this multiplicity of approaches, however, they all derive from two fundamental types of choice-of-law analysis—the traditional approach and modern interest analysis.[15] The key differences between these two theories arise from their normative grounding; while the traditional approach provides principles for deciding among competing laws that are external to either state's substantive law, the modern interest analysis resolves choice-of-law problems by analyzing the competing laws

8. *See*, *e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 138 (1971) [hereinafter RESTATEMENT (SECOND)]; RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 597 (1934) [hereinafter RESTATEMENT (FIRST)].

9. *See*, *e.g.*, RESTATEMENT (SECOND), *supra* note 8, § 137; RESTATEMENT (FIRST) *supra* note 8, § 596.

10. LEA BRILMAYER ET AL., AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM 256-58 (1986). The distinction between substance and procedure in choice of law, however, is not always clear, as some rules involve both substantive and procedural purposes. *See id.* at 257-58.

11. *Id.* at 256-57.

12. Larry Kramer, *Rethinking Choice of Law*, 90 COLUM. L. REV. 277, 324 (1990).

13. Nicholas Quinn Rosenkranz, *Federal Rules of Statutory Interpretation*, 115 HARV. L. REV. 2085, 2141-42 (2002) (reasoning that statutes are merely "strings of words"); *see also* William N. Eskridge, Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 STAN. L. REV. 321, 345-53 (1990) (arguing that "[h]ermeneutics suggests that the text lacks meaning *until* it is interpreted.").

14. BRILMAYER ET AL., *supra* note 10, at 257.

15. *Id.* at 218.

themselves.[16] The traditional approach aims to provide a set of independent jurisdiction-selecting rules to determine the applicable law for specific categories of legal issues.[17] For example, the "internal affairs doctrine" instructs courts to apply the law of the state of incorporation in lawsuits involving corporate governance, regardless of the content of the potentially applicable laws.[18] In contrast, modern interest analysis determines the applicable law by examining the content of and policies motivating each potentially applicable law.[19] Under interest analysis, a court should ascertain the policies underlying the competing laws through the "familiar" process of statutory construction and decide whether each state has a legitimate interest in asserting its policy given the facts of the case at hand.[20] Some states have adopted either the traditional or modern approach in its entirety.[21] Most states, however, have developed choice-of-law methodologies that incorporate some of the traditional jurisdiction-selecting principles while also considering the policies of the competing rules of decision.[22]

The traditional and modern choice-of-law approaches offer courts guidance in selecting the applicable substantive law, but both are silent on *how* courts should apply that statute and decipher its meaning. Choice-of-law theory stipulates that the forum's lawmaking power is limited, because it cannot overrule

16. LEA BRILMAYER, CONFLICT OF LAWS 1-6 (2d ed. 1995).

17. William M. Richman & David Riley, *The First Restatement of Conflict of Laws on the Twenty-Fifth Anniversary of Its Successor: Contemporary Practice in Traditional Courts*, 56 MD. L. REV. 1196, 1197-98 (1997).

18. BRILMAYER, *supra* note 16, at 23; Frederick Tung, *Before Competition: Origins of the Internal Affairs Doctrine*, 32 J. CORP. L. 33, 39-40 (2006).

19. BRAINERD CURRIE, SELECTED ESSAYS ON THE CONFLICTS OF LAW (1963) is the seminal work on the theory of interest analysis.

20. Lea Brilmayer, *Governmental Interest Analysis: A House Without Foundations*, 46 OHIO ST. L.J. 459, 462-64 (1985) (quoting CURRIE, *supra* note 19, at 183-84).

21. As of 2012, only ten states adhere to the traditional approach in torts cases and twelve states do so in contract cases. Symeon C. Symeonides, *Choice of Law in the American Courts in 2012: Twenty-Sixth Annual Survey*, 61 AM. J. COMP. L. 217, 278 tbl.1 (2013). Only California and the District of Columbia apply pure interest analysis in torts cases. *Id.*

22. BRILMAYER ET AL., *supra* note 10; Herma Hill Kay, *Currie's Interest Analysis in the 21st Century: Losing the Battle, But Winning the War*, 37 WILLAMETTE L. REV. 123, 123 (2001). For example, the Restatement (Second) of Conflicts, which is the dominant choice of law methodology among state courts today, includes some traditional territorial jurisdiction-selecting rules, such as the internal affairs rule. RESTATEMENT (SECOND), *supra* note 8, § 313; BRILMAYER ET AL., *supra* note 10, at 243-45. At the same time, however, the Second Restatement directs courts to weigh the policies underlying the competing laws, reflecting the values and methods of interest analysis. RESTATEMENT (SECOND), *supra* note 8, § 6; BRILMAYER ET AL., *supra* note 10, at 243-45.

a sister state court's determination of its own law;[23] a puzzle emerges, however, when the forum confronts a statutory interpretation question that the sister state courts have not yet addressed. There is no traditional jurisdiction-selecting rule for statutory interpretation methodology, perhaps due to an assumption that there is not much of a choice to be made at all.[24] Similarly, even though interest analysis refers to statutory construction, it describes the process as inherently "ad hoc,"[25] leaving courts without meaningful direction in how to select an interpretive methodology.

This lack of interpretive guidance is particularly significant as many states have varying approaches to statutory interpretation methodology. While some cases are clear, such that the statute will yield the same result regardless of rules of construction, methodological choice can alter the outcomes in other cases.[26] For example, Ohio construes remedial statutes liberally,[27] but Michigan uses this canon only as a last resort, even where a statute is ambiguous.[28] Therefore, in a torts case involving parties and events in Michigan and Ohio, the forum court's choice of rules of statutory construction could significantly impact the way in which the court interprets the statute. As a result, although Michigan and Ohio choice-of-law principles could select the same torts statute, the result of the case may be different depending on whether the court adopts Michigan or Ohio rules of construction.

23. Lea Brilmayer, *The Other State's Interests*, 24 CORNELL INT'L L.J. 233, 235 (1991) [hereinafter Brilmayer, *The Other State's Interests*] ("[T]he local judge is acting merely as a proxy for the foreign lawgiver. In consequence, the local judge has no authority to overrule the other state's determination of its own law. . . . [E]ven a judge from the highest court in the state must adhere to existing interpretations of the other state's legal rules.").

24. *See* Larry Kramer, *Interest Analysis and the Presumption of Forum Law*, 56 U. CHI. L. REV. 1301, 1301 (1989) ("Traditional choice of law analysis presupposes that deciding cases with multistate contacts is a two-step process: first one 'chooses' the law that governs the dispute, then one 'applies' the chosen law. The second step involves the familiar process of interpreting law to determine the parties' rights in the dispute. The difficulty lies in the first step of the process: choosing the applicable law.").

25. Brainerd Currie, *The Verdict of Quiescent Years: Mr. Hill and the Conflict of Laws*, 28 U. CHI. L. REV. 258, 295 (1961) ("While there are some general principles to guide us, statutory construction must always be an *ad hoc* process.").

26. *See* Gluck, *supra* note 4, at 1961, 1963, 1965-68.

27. OHIO REV. CODE ANN. § 1.11 (West 2014) ("Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice."); Clark v. Scarpelli, 744 N.E.2d 719, 724 (Ohio 2001).

28. Crowe v. City of Detroit, 631 N.W.2d 293, 300 (Mich. 2001).

II. CURRENT PRACTICES IN INTERPRETING SISTER STATE LAW

Without guidance from choice-of-law principles, state courts applying sister-state statutes use inconsistent interpretive practices. Many courts consciously adopt the interpretive methodology of the state whose statute is being applied.[29] For example, in *Magee v. Huppin-Fleck*,[30] an Illinois appellate court construed an Oregon statute under the Oregon Supreme Court's formalistic interpretive regime, known as the *PGE* framework.[31] Instead of applying the Illinois Supreme Court's interpretive principles, the *Magee* court supported each step of its analysis with citations to the three-step, tiered *PGE* framework.[32] Other courts simply use their own methodologies to construe the statutes of sister states without reference to the sister states' interpretive practices.[33] Still other courts, recognizing similarities between forum-state and sister-state approaches to statutory construction, have cited both states' interpretive methodologies.[34] And a few courts seemingly dodge the choice of interpretive methodology altogether simply by presuming similarity to forum state law when confronted with unsettled or unclear interpretations of sister state statutes.[35]

29. *See*, *e.g.*, Mariculture Prods., Ltd. v. Those Certain Underwriters, 854 A.2d 1100, 1107 (Conn. App. Ct. 2004) ("We use Maine's rules of statutory interpretation . . . because we are interpreting Maine law."); Kolberg v. Sullivan Foods, Inc., 644 N.E.2d 809, 812 (Ill. App. Ct. 1994) (citing Wisconsin's plain meaning rule to apply a Wisconsin statute); CACV of Colo., LLC. v. Stevens, 274 P.3d 859, 864 (Or. Ct. App. 2012) (citing a Delaware code of interpretation and the Delaware Supreme Court's absurd results canon to interpret a Delaware statute); Autonation Direct.com, Inc. v. Thomas A. Moorehead, Inc., 278 S.W.3d 470, 473-74 (Tex. App. 2009) (interpreting a Virginia statute under Virginia's plain meaning rule).

30. 664 N.E.2d 246, 251-52 (Ill. App. Ct. 1996).

31. Portland Gen. Elec. Co. v. Bureau of Labor & Indus., 859 P.2d 1143 (Or. 1993); *see also* Gluck, *supra* note 2, at 1775-85 (describing the *PGE* framework).

32. *Magee*, 664 N.E.2d at 251-52. It is noteworthy, however, that a search of *PGE*'s citing references on Westlaw revealed that *Magee* was the only case where a sister state used the *PGE* framework to interpret an Oregon statute.

33. *See, e.g.*, Weber v. U.S. Sterling Secs., Inc., 924 A.2d 816, 823 n.5 (Conn. 2007) ("Although we apply the substantive law of Delaware[,] . . . procedural issues such as how this court interprets statutes are governed by Connecticut law."); Turner v. Ford Motor Co., 265 N.W.2d 400, 402-03 (Mich. Ct. App. 1978) (employing Michigan interpretive methodology to construe a Georgia statute).

34. *See*, *e.g.*, Wilgus v. Estate of Law, 1996 WL 769335, at *4 (Del. Super. Ct. Dec. 27, 1996); Wooley v. Lucksinger, 2006-1140 (La. App. 1 Cir. 2008), 14 So.3d 311, 414, *aff'd in part and rev'd in part on other grounds*, 2009-0571, p. 137 (La. 2011), 61 So.3d 507; Sholes v. Agency Rent-A-Car, Inc., 601 N.E.2d 634, 638 (Ohio Ct. App. 1991).

35. *See*, *e.g.*, Holly Sugar Corp. v. Union Supply Co., 572 P.2d 148, 150 (Colo. 1977) (concluding that because there are no Montana precedents on point, "this court must be guided by its own precedents in interpreting similar statutes"); ROC-Century Assocs. v. Giunta, 658 A.2d

Even courts within the same state have adopted conflicting approaches. For example, the Connecticut Supreme Court cited its own precedents and legislative code of interpretation in construing a Delaware statute,[36] while a Connecticut appellate court used Maine's rules of construction to interpret a Maine statute.[37] Furthermore, a Connecticut trial court recently concluded that the issue of which rules of construction apply in interpreting sister state statutes is a "matter of first impression,"[38] highlighting the doctrinal incoherence and confusion.

As these examples demonstrate, the practice of methodological choice in interpreting sister state statutes remains doctrinally unmoored. Furthermore, methodological choice in interpreting sister state statutes suffers from conceptual looseness, as courts rarely justify their selection of interpretive frameworks. Instead, many courts construing the statutes of other states simply apply their own methodologies,[39] those of the sister state,[40] or both,[41] without explaining or citing authorities to support that choice. The court's analysis in *Autonation Direct.com, Inc. v. Thomas A. Moorehead, Inc.* is typical: after concluding that Virginia substantive law applied, the Texas court reasoned it should "look to Virginia law on statutory construction" but cited no authorities to justify this methodological choice.[42] As a result, it is unclear whether, and to what extent, choice-of-law principles guided these courts' methodological decisions in construing sister state statutes.

The courts that have attempted to justify their methodological choices offer unsatisfying explanations. One court adopted sister state methodology as the most relevant means for "ascertaining substance,"[43] and another reasoned that

223, 226 (Me. 1995) ("[I]f New York law is unclear or unsettled, it is appropriate to . . . apply[] the law of Maine as the forum state."); Am. Honda Fin. Corp. v. Bennett, 439 N.W.2d 459, 462 (Neb. 1989) ("Where another state's law is unclear or undecided, we assume its law to be the same as ours and apply Nebraska's law to the dispute.").

36. *Weber*, 924 A.2d at 823-24.

37. Mariculture Products Ltd. v. Those Certain Underwriters, 854 A.2d 1100, 1107-09 (Conn. App. Ct. 2004).

38. Carbone v. Nxegen Holdings, Inc., 2013 WL 5781103, at *4 n.4 (Conn. Super. Ct. Oct. 3, 2013).

39. For example, in *Turner*, the Michigan court applied its own interpretive methodology to construe a Florida statute without explaining or citing authorities to support that choice. 265 N.W.2d 400, 402-03 (Mich. Ct. App. 1978).

40. *Mariculture Products*, 854 A.2d at 1107.

41. Wilgus v. Estate of Law, 1996 WL 769335, at *4 (Del. Super. Ct. Dec. 27, 1996).

42. 278 S.W.3d 470, 473 (Tex. App. 2009).

43. Magee v. Huppin-Fleck, 664 N.E.2d 246, 251 (Ill. App. Ct. 1996).

applying a different interpretive methodology would be "illogical."[44] These courts, however, largely fail to identify the sources of these vague notions and do not offer supporting authorities.[45] It therefore remains unclear which principles guide courts' choice of methodology in construing sister state statutes.

III. INTERSYSTEMIC STATUTORY INTERPRETATION FROM A CHOICE-OF-LAW PERSPECTIVE

Current ad hoc practices are at odds with the principles underlying choice-of-law systems; because current practices are doctrinally unmoored, courts presented with conflicting rules of construction are seemingly free to select the methodology according to personal predilections without justification.[46] Given the substantive nature of interpretive methodology and the close relationship between the interpretive process and statutory meaning, courts should, at the very least, provide explicit justification for their choice of interpretive methodology. Accounting for methodological choice within the choice-of-law analysis would not only increase transparency concerning the court's reasoning, but would also provide a rational basis for the court's adoption of a framework that would help guide future interpreters.

What is the proper role of statutory interpretation methodologies in choice-of-law doctrines? Abbe Gluck's recent study of intersystemic statutory interpretation in the federal-state context[47] is instructive, but not readily transferable, as different considerations animate choice-of-law principles in the state-state context.[48] Accordingly, we must engage with the choice-of-law prin-

44. Carbone v. Nxegen Holdings, Inc., 2013 WL 5781103, at *4 n.4 (Conn. Super. Ct. Oct. 3, 2013).

45. The court in *Magee* cited a treatise to justify its choice of sister state methodology, 664 N.E.2d at 251, but even this treatise acknowledges there are conflicting authorities on which state's interpretive rules apply. 2 N. SINGER, SUTHERLAND ON STATUTORY CONSTRUCTION § 37.05 (5th ed. 1992) ("Although there is authority that the rules of statutory construction prevailing under the laws of the forum are followed, the rules of the state in which the statute was enacted should be followed if they have been pleaded and proved.").

46. As a prominent choice-of-law theorist reasoned, "If every court were to determine for itself, completely without reference to any general principle, the extent to which it chose to be guided by the foreign law such confusion might well result as to defeat the very purpose of the rules of the Conflict of Laws." 3 JOSEPH H. BEALE, A TREATISE ON THE CONFLICT OF LAWS 1601 (1935).

47. In that article, Gluck argued that federal courts should apply state interpretive methodology to state statutory questions. Gluck, *supra* note 4.

48. States are co-equal sovereigns while federal courts have limited powers and lack a general common law. BRILMAYER ET AL., *supra* note 10, at 258. In addition, unlike many state courts, federal courts do not accord principles of statutory construction stare decisis effect. *See* Foster, *supra* note 3, at 1874-75 (noting that the Supreme Court characterizes interpretive prin-

ciples providing for the application of sister state law to understand how statutory interpretation methodology functions in multistate cases. Generalizations concerning both statutory interpretation and choice of law in all fifty states are inherently difficult,[49] so resolving the proper role of interpretive methodology in choice of law ultimately depends on state-specific factors. At a general level, however, the normative and doctrinal underpinnings of choice-of-law theories suggest that courts should adopt sister state methodologies when interpreting statutes of that state—or, at the very least, more explicitly justify decisions to pair sister state statutory text with the forum state's principles of statutory interpretation.

Directing the forum court to apply the interpretive methodology of the sister state whose statute is being construed would be most consistent with choice-of-law principles. A state's underlying interpretive regime is an integral part of statutory meaning, guiding interpreters in issues such as discerning the legal consequences of grammatical structures in statutory text,[50] deciding which types of extrinsic sources have legal effect[51] and whether, and to what extent, courts can consider substantive norms in deciding statutory questions.[52] Furthermore, in many ways, a state's interpretive principles themselves demonstrate normative policies and values. Substantive canons of interpretation most clearly represent policy preferences, as virtually all are based on larger norms and values. One critic has called them "dice-loading rules."[53] More broadly, many interpretive principles reflect "public values," or larger norms and principles drawn from evolving statutory policy and the common law.[54] As a result, a forum court that construes a sister state statute under its own interpretive regime risks undermining that state's statute as the rule of decision and instead asserts its own lawmaking power.

ciples as "guides that need not be conclusive" rather than "mandatory rules" (quoting Chickasaw Nation v. United States, 534 U.S. 84, 94 (2001))).

49. *See supra* notes 15-22 and accompanying text (describing the variety of choice of law methodologies among state courts today); *supra* text accompanying notes 26-28.

50. WILLIAM N. ESKRIDGE, JR. ET AL., CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 848 (4th ed. 2007) (describing the textual canons of construction).

51. *Id.* at 955 (describing rules of interpretation concerning when and how to consult the common law, other statutes, legislative history, and agency interpretations).

52. *Id.* at 848 (describing the substantive canons of construction).

53. Gluck, *supra* note 4, at 1984 (quoting Antonin Scalia, *Common-Law Courts in a Civil Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, *in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 28 (Amy Gutmann ed., 1997)).

54. William N. Eskridge Jr., *Public Values in Statutory Interpretation*, 137 U. PA. L. REV. 1007, 1007-10 (1989).

The policies underlying choice-of-law principles further militate in favor of construing sister state statutes with that state's interpretive principles. Although choice-of-law theory has varied over time and across jurisdictions, "[u]niformity of results, regardless of forum, has always been a major goal in choice-of-law theory."[55] State interpretive methodologies are diverse, rendering the forum's choice of interpretive framework potentially outcome-determinative.[56] Interpreting a statute under the same principles of construction regardless of forum would thus help ensure uniformity of result for litigants. This approach may not provide complete uniformity, because even applying the rules of construction requires normative judgments[57] and because precisely defining a state's statutory interpretation methodology could be challenging in some cases.[58] The results, however, would be more uniform than if each court continued to determine interpretive methodology in an ad hoc manner.

This approach is also consistent with interest analysis and its focus on legislative intent. By grounding the choice-of-law inquiry in analysis of the policies underlying substantive laws, interest analysis is thus premised on the normative goal of furthering legislative intent and purpose.[59] Judicial interpretive methodology is arguably linked to legislative intent in states where legislators draft statutes against the backdrop of formalistic interpretive regimes and precedential rules of construction.[60] Furthermore, although this is not conclusive evidence, the fact that many drafting manuals used by state legislative drafting

55. Robert A. Leflar, *Conflicts Law: More on Choice-Influencing Considerations*, 54 CALIF. L. REV. 1584, 1586 (1966); *see also* Kramer, *supra* note 12, at 313 & n.113 (noting that uniformity and predictability are values that all conflict of laws scholars recognize). The traditional choice of law approach in particular is intended to promote uniformity of result and discouraging forum shopping. BRILMAYER ET AL., *supra* note 10, at 220 & n.20.

56. *See supra* notes 26-28 and accompanying text.

57. *See* William N. Eskridge, Jr., *The New Textualism and Normative Canons*, 113 COLUM. L. REV. 531, 552 (2013) (reviewing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012)).

58. For example, in states where the legislature and judiciary disagree over the proper method of statutory interpretation. *See* Gluck, *supra* note 2, at 1785-97.

59. *See* CURRIE, *supra* note 19, at 364-65 ("A prime advantage of this approach over traditional conflict-of-laws methodology is that, while inquiring specifically into the governmental policies and interests involved, it explicitly recognizes the power of the legislative branch to determine what domestic policy is and when domestic interests require application of that policy . . . ."); Lea Brilmayer, *Interest Analysis and the Myth of Legislative Intent*, 78 MICH. L. REV. 392, 392 (1980).

60. *See* Amanda L. Tyler, *Continuity, Coherence, and the Canons*, 99 NW. U. L. REV. 1389, 1420-21 (2005). Although there is no empirical work documenting state legislators' awareness of the interpretive regime, anecdotal evidence from Oregon suggests legislators draft statutes with the Oregon Supreme Court's interpretive framework in mind. Gluck, *supra* note 4, at 1982.

offices contain the state's rules of interpretation[61] suggests a link between the state's interpretive methodology and legislative intent. In contrast, applying another state's methodology or simply presuming similarity to forum law entirely divorces methodological choice from legislative expectations about how a statute will be construed.

CONCLUSION

This Comment has aimed to introduce the question of methodological selection in choice-of-law cases and provide the first intersystemic analysis of statutory interpretation in multistate cases. This analysis is significant not only in contributing to the growing literature concerning statutory interpretation at the state level but also in shining light on a gap in choice-of-law theory and doctrine. Examining the intersection between choice-of-law doctrine and statutory interpretation methodology reveals that the issue is poorly understood from both a practical and a theoretical perspective. Resolving the status of statutory interpretation methodology in choice-of-law doctrines is necessary to provide theoretical coherence and offer practical guidance to courts determining how to resolve multistate cases. Although state-specific considerations must be accounted for in practice, at a general level, applying sister state interpretive methodology when interpreting sister state statutes would best enable state courts to advance the values underlying choice-of-law principles.

GRACE E. HART[*]

61. *See*, *e.g.*, Legislative Counsel Comm., *Bill Drafting Manual*, OR. ST. LEGIS. 20.1-.15 (2012), http://www.lc.state.or.us/pdfs/draftingmanual.pdf [http://perma.cc/EB66-KH95] (discussing judicial interpretive principles); *Texas Legislative Council Drafting Manual*, TEX. LEGIS. COUNCIL app. 5 (2015), http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf [http://perma.cc/3T9W-7P4M] (listing Texas legislature's rules of statutory construction); *Wisconsin Bill Drafting Manual 2011-2012*, WIS. ST. LEGIS. 37-64 (2012), http://docs.legis.wisconsin.gov/statutes/drafting_manual/general.pdf [http://perma.cc/9M7P-63RX] (providing guidelines for legislative drafters based on Wisconsin judiciary's interpretive principles).

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