

# Law Matters—Less Than We Thought, by Holger Spamann & Daniel M. Klerman

Holger Spamann and Daniel Klerman recently conducted a most interesting experiment on judicial behavior in the context of conflict of laws, the results of which have been pre-published by the Journal of Law, Economics, and Organization. They have kindly provided the following summary for the readers of this blog (who may access the full paper here):

*Modern American choice of law has been much criticized for giving judges too much discretion. In particular, Brilmayer and others predict that the use of open-ended standards, such as the Restatement Second's "most significant relationship" test, will enable judges to decide disputes in biased ways, including a bias in favor of plaintiffs. In contrast, critics argue that the more rules-based approach - such as the lex loci delicti principle that prevailed in America before the 1960s and that, in large part, continues to apply in much of the world - would be more predictable and less subject to bias. We designed an experiment involving US federal judges to test whether the modern American, standards-based approach is, in fact, less predictable and more subject to bias. We find that the rules-based approach may constrain more than the modern standards-based approach, although even under seemingly clear rules judicial decisions were less predictable than we expected. Judges under neither the lex loci rule nor that "most significant relationship" standard exhibited a bias towards the more sympathetic party, although we did detect some pro-plaintiff bias under both the rule and the standard. Somewhat surprisingly, we also found that judges who were supposed to apply the modern "most significant relationship" standard tended to decide according to lex loci delicti rule.*