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Symposium: The Role of Federal Law in Private Wealth Transfer

Introduction

*Jeffrey Schoenblum**

Property and inheritance are “quintessential state matters.”¹ In fact, there is no federal intestacy law. There is no federal wills law. There is no federal trust law. And yet. . . .

Increasingly, federal law impacts court decisions involving private wealth transfer. Increasingly, federal law is the central consideration in premortem and postmortem planning for private wealth transfer. Despite this, until recently, little scholarly attention has been paid to this phenomenon; the assumption regarding the centrality of state law, quoted above, having gone largely unquestioned. But now that the “sleeping giant” has awakened, the role that federal law plays in private wealth transfer requires serious and comprehensive academic consideration.

This symposium issue of the *Vanderbilt Law Review* is intended to do just that. There are ten articles addressing various facets of the topic. These are set forth in the same order as the order of the presentations made by the distinguished authors at the symposium that took place at Vanderbilt Law School in Nashville,

* Centennial Professor in Law, Vanderbilt University Law School.

1. *Medellin v. Texas*, 552 U.S. 491, 547 (2008) (Breyer, J., dissenting).

Tennessee earlier this year.² A number of the articles are followed by comments by other distinguished scholars, who not only address the particular article, but also use the comment as a platform to explore other aspects of the topic

The old paradigm is dead. Private wealth transfer law is NOT just state law. Indeed, in some respects, it is now principally federal law. This increasing federalization and even dominance can be expected to continue apace. While the problems and consequences of federalization are not new to many other areas of law and have received considerable and serious scholarly attention, they are new to private wealth transfer. The way in which the state-federal balance is being struck, the consequences for private wealth transfer flowing from federal involvement, and the principles that should guide courts and legislators in determining the proper state-federal allocation, are all examined with considerable analytic care in these pages. Hopefully, this symposium issue will stimulate similar efforts in the future—all contributing to a better understanding of what the federal role is and what it ought to be in this historically state dominated area of law.

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