**COMPARING RULES AND STANDARDS**

**Richard D. Freer, *Of Rules and Standards: Reconciling Statutory Limitations on "Arising Under" Jurisdiction*, 82 Ind. L.J. 309, 311-12 (2007):**

In my opinion, the Court does this by recognizing-implicitly, I admit-the difference between a **rule** and a **standard**. A **rule** affords the decisionmaker no discretion, but cabins its inquiry to whether a given set of facts exists. A **standard**, in contrast, affords the decisionmaker greater discretion by prescribing a series of relevant factors to be weighed in view of a policy goal. In illuminating the difference, we benefit by juxtaposing the centrality requirement with the well-pleaded complaint **rule**. The latter performs a task well-suited to a **rule**-it asks a question that can be answered yes or no. The centrality requirement, however, asks a fundamentally different kind of question-how much federal content is required to invoke jurisdiction. This sort of question is best addressed by a less determinate **standard**, which requires the court to balance federal and state interests and to consider, among other things, what I will call “litigation reality”-that is, what issues must be resolved if the underlying dispute is adjudicated.

Thus Holmes's view of federal question jurisdiction-that it exists to provide a federal trial forum for vindication of federally-created claims-erred by applying a **rule** (which I will call the “Holmes test”) for an assessment that requires the subtlety of a **standard**. Like the Holmes test, the Grable **standard** for centrality may be a product of its time. It implicitly recognizes that today-perhaps unlike when Holmes wrote-case load makes it impossible for the Supreme Court to discharge the task of providing significant appellate review of state-court interpretations of federal law. Thus the holding, the language, and the overall tone of Grable support a broader role for lower federal courts than the grudging older cases. At the same time, there must be appropriate limits to ensure that federal question jurisdiction does not threaten either to inundate the federal courts or to rob the state courts of their legitimate authority to shape state law. I suggest that Grable, augmented by the types of considerations relevant to the discretionary decline of supplemental jurisdiction and applied with proper concern for state prerogatives, goes a long way toward achieving an appropriate balance.