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Cases and Other Materials on Judicial Technique in Conflict of Laws

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BOOK REVIEWS

CASES AND OTHER MATERIALS ON JUDICIAL TECHNIQUE IN CONFLICT OF LAWS. By Fowler Vincent Harper and Charles W. Taintor II. Indianapolis: The Bobbs-Merrill Co. 1937. Pp. xxix, 1189.

Two new casebooks on conflict of laws have been published during the last few years.[1] With the new editions of Lorenzen, and with Beale's and Humble's books also in the field, the teacher of conflict of laws has his choice of five different casebooks. Is there still room for a sixth? The answer is in the affirmative if the sixth book is a work of such originality, scholarly achievement and didactical skill as Professors Harper and Taintor's new *Cases and Other Materials on Judicial Technique in Conflict of Laws.*

This book is a work of many novel features, among which the author's emphasis on the basic general problems of the field of conflict of laws is the most important. Part I, entitled "Foreign Elements in Legal Relations," consists exclusively of materials dealing with certain important aspects of conflict of laws in general. In the second division (Parts II-IV), materials are presented on conflict of laws situations in various branches of procedural and substantive law.

What judicial technique one applies to conflict of laws problems depends, to a large extent, upon one's ideas about the social function of this field of law, and in particular, upon one's answer to the question of why the law requires courts at all to decide certain cases under the rules of some law other than that of their own state or country. The materials which Messrs. Harper and Taintor present on this basic problem are selected and arranged in such a way as to impress the student with the practical necessity of uniformity of decision irrespective of where a law suit may happen to be commenced. A law review article by Mr. Goodrich is skillfully used as the cornerstone of this section on "Function and Policy of Conflict of Laws." This article culminates in the statement that "both a sense of fairness and a consideration of general commercial convenience require that when a matter has been settled, in conformity with the law then and there controlling the actions of the parties, the settlement should not be disturbed because the point arises for litigation somewhere else. In instances involving personal reltaions, the appeal for uniform treatment becomes, emotionally, at least, even stronger."[2] The student is thus impressed with the fact that the bases of the conflict of laws do not lie in any "logical" or mystical necessities or theories but in considerations of expediency and fairness.

The authors do not open their book, however, with this statement, but with a chapter on "Postulates and Their Derivatives," in which they expose their readers to the motley theories which have been developed, not only in order to explain the strange phenomenon of domestic courts applying

[1] CARNAHAN (1935); CHEATHAM, GOODRICH, AND DOWLING (1936).

foreign laws but also to guide the courts in their practical task. Students of conflict of laws must have some familiarity with these theories which, although they may not so much have guided the courts, have furnished them with the phrases in which to express, and sometimes behind which to hide, their actual considerations.

The scholars of what may be called the classical school of American conflict of laws have been blamed for attempting to reduce the conflict of laws to a small number of basic principles, such as territoriality and personality of laws, from which the solutions of special problems are thought to be derived. The *Restatement of Conflict of Laws,* in particular, which to a certain extent reflects this attitude, has been attacked by a vigorous opposition. The radical wing of this opposition group advocates that conflict of laws problems should be solved by a process of trial and error and patient search for that decision which does the greatest justice to the case at hand. Significant passages from an article of Professor Cavers,[3] one of the most eloquent advocates of the trial and error method, are reproduced in Messrs. Harper and Taintor's book.[4] They give equal expression, however, to Professor Goodrich's opinion that the very field of conflict of laws is one of those where stability and predictability of decision are of the utmost importance; of greater importance, perhaps, than complete individual equity.[5] The methodological approach recommended by the authors themselves in their "Note on Social Policies in the Conflict of Laws,"[6] appears as an attempt to reconcile the ideal of individual fairness and equity with that of predictability of decision, with some preference for individual equity.

The book's initial chapter on function and general method of the conflict of laws is followed by a long chapter (162 pages) on "Devices for Identifying Significant Foreign Elements (Points of Contact)." It is devoted to the presentation of those factual elements of human relations which are typically picked by courts and legislators as essential for connecting a factual human relation with the law of a particular state or country. Materials are presented on eight such "points of contact": nationality, domicil, place of contracting, place of performance, place of injury, place of doing business, location of persons and things, and, finally, the forum. An additional section deals with "accumulation of contact points." A teacher devoted to a purely inductive method of teaching may perhaps prefer to omit this chapter. It appears quite practicable, indeed, to discuss the various points of contact in connection with the decisions dealing with particular problems and to regard such concepts as domicil or situs as catch-words for a variety of different situations. The facts necessary, for instance, to connect an individual with a state for the purpose of determining the law governing

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[2] *Public Policy in the Law of Conflicts* (1931) 36 W. VA. L. Q. 156, 168, HARPER AND TAINTOR 45, 47.

[3] *A Critique of the Choice-of-Law Problem* (1933) 47 HARV. L. REV. 173, 192.

[4] P. 52.

[5] *Public Policy in the Law of Conflicts* (1931) 36 W. VA. L. Q. 156, 168, HARPER AND TAINTOR 45, 50.

[6] Pp. 55-58.

succession to his estate are not the same as those necessary to connect an individual with a state for the purpose of determining venue in a damage suit, or the place where a person is entitled to vote or to receive poor relief. The indiscriminate application of the term domicil to such a variety of different situations has led to much confusion. Messrs. Harper and Taintor's materials are so chosen, however, that they can well be used as illustrations of the fallacious character of such uniform concepts, and also as a stimulating first survey of the entire field of conflict of laws.

The following (third) chapter, entitled "Basic Technical Difficulties," appears as the most debatable part of the book. It deals with two topics: qualification and renvoi. The latter topic has become a familiar object for law course treatment in recent years. A chapter of more than seventy pages on qualification, however, is an innovation in an American casebook on conflict of laws which needs justification. Messrs. Harper and Taintor seem inclined to believe that the silence so long observed about qualification by American courts and scholars is due to innocent ignorance. They apparently welcome the appearance of the word "qualification" in recent decisions[7] and the learned discussions of qualification which have recently appeared in English.[8]

The word "qualification" or "characterization" denotes, primarily, a basic element of legal thought in general, *viz.*, the subsumption of factual situations under legal concepts. If a court has to decide, for instance, whether some transaction is unenforceable under the Statute of Frauds, it has to "characterize" the facts, *i.e.*, to determine whether what the parties did or said constitutes a sale, or a contract to be performed within a year, *etc.* In different systems of law, the same set of facts may be characterized under different legal categories. That such different "qualifications" may result in obstacles to the achievement of international uniformity of decision was observed almost simultaneously, about the turn of the century, by Etienne Bartin in France and by Franz Kahn in Germany. Both scholars were concerned with the problem of whether the ideal end of conflict of laws, *viz.*, international uniformity of decision, was ever attainable. Suggestions had been made for the adoption of uniform conflict of laws rules by all countries of the world. Working independently of each other, Bartin and Kahn pointed out that the adoption of such a plan would not lead to real uniformity of decision, because the terms used in the uniform choice-of-law rules would be interpreted differently in different countries.

Properly understood, this problem is merely one of legislative draftsmanship. It simply implies a warning addressed to draftsmen of international conventions and uniform statutes on conflict of laws to make sure that

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[7] See University of Chicago v. Dater, 277 Mich. 658, 270 N. W. 175, HARPER AND TAINTOR 248 (1936).

[8] Lorenzen, *The Theory of Qualifications and the Conflict of Laws* (1920) 20 COL. L. REV. 247, HARPER AND TAINTOR 232; Beckett, *Classification in Private International Law* (1934) 15 BRIT. Y. B. INT. LAW 46; CHESHIRE, PRIVATE INTERNATIONAL LAW (1935) 9 *et seq.*; Falconbridge, *Characterization in the Conflict of Laws* (1937) 53 L. Q. REV. 235.

their terms are understood in the same sense by the judges of all the countries concerned.

If the term "*question de qualification*" referred to no other problem, practising lawyers and judges would have little concern with it. The term has been applied, however, by Bartin and his successors, to a number of different problems, the clarification of which does not appear to be furthered by their being lumped together under one label. The authors of our casebook have followed the French lead and included in their chapter on qualification cases on every one of these different problems.

The first problem treated as one of qualification by the French theorists and their American followers may be illustrated by the case of *Boaz v. Swinney*[9]: X was adopted by Y, a resident of Illinois. Y died. When Z, a brother of Y, died, X claimed a share in immovables left by Z in Kansas, alleging that under Kansas law an adopted child was entitled to represent his deceased adoptive father in the distribution of the estate of a brother of the adoptive father. *Z's* other heirs pleaded that under the Illinois Adoption Law the rights of inheritance given to an adopted child were restricted to inheritance from the adoptive parent. The Supreme Court of Kansas denied *X's* share in *Z's* immovable estate. Twenty years later, in 1929, this decision was overruled by the Kansas court in *In re Reimann's Estate*.[10] From this latter decision, the authors of our book quote the following sentence: "We think there is no such status as that of a partially adopted child any more than there is of a partially married spouse. A child is adopted or not; a woman is either married or not." This sentence is properly criticized by Messrs. Harper and Taintor. "Why," so they ask, "can not a woman be 'partially married'? Indeed, are there not many situations in which she is married for some purposes but not for others?"[11] But what has this case to do with "qualification," *i.e.*, with different conceptual subsumptions of a certain factual situation in two different legal systems? The authors seem to believe that the decisions of these cases depended upon different interpretations of the juristic category "status". Does adoption create a "status"? If so, its consequences must be governed by the law of the domicil; if not, the law of the domicil does not apply. This notion is based on the assumed existence of a choice of law rule that "status" is governed by the law of the domicil. But is there such a rule? The very problem of the case seems rather to arise from the fact that such a rule is formulated too broadly. The problem with which the Kansas court was faced in the two cases can be formulated as follows: "We do not have in our jurisdiction an established choice-of-law rule with respect to the inheritance rights of adopted children in immovables. There are two possible rules which we can establish, *viz.*,

"(1) the right of an adopted child to take land by inheritance is determined by the law of the domicil; and

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[9] 79 Kan. 332, 99 Pac. 621, HARPER AND TAINTOR 264 (1909).

[10] 124 Kan. 539, 262 Pac. 16 (1929).

[11] P. 266, n. 16.

"(2) the right of an adopted child to take land by inheritance is determined by the law of the situs of the land."

In *Boaz v. Swinney*, the court adopted rule (1); in the later case of *In re Riemann's Estate* it overruled itself and adopted rule (2).

Of the same type is the problem of the well-known case of *Ogden v. Ogden*.[12] "In this case a Frenchman had married an Englishwoman in England. He did not have the consent of his parents as required by French law, although no such requirement was necessary by English law. On his application, a French court granted a decree of nullity. The Englishwoman thereafter married an Englishman in England who, after learning of the previous marriage, brought an action in an English court to have his marriage declared null. The English court decided (1) that English law governed the validity of the first marriage and that by English law, it was valid. . . ."[13]

On this case, Messrs. Harper and Taintor comment as follows:

"The court seemed to view the problem as one of a clash of conflict of laws rules of reference or choice of law; the French law referring the question of parents' consent to the law of the nation, the English law to the place where the marriage ceremony was performed. The court merely elected to follow its own conflict of laws rule rather than that of France. This is, however, a highly elliptical way of formulating the problem. A complete statement of the English conflict of laws rule governing the validity of a marriage is that (a) matters of formality are governed by the place of celebration, (b) matters of essentials, including capacity, are governed by the law of the domicil. The rule is the same in France except that the law of the nation rather than the domicil governs capacity. France was both the nation and the domicil of the French spouse. It was also the matrimonial domicil because, under both English and French law, the wife takes the husband's domicil. Therefore, before the issue could be decided, it was necessary to determine the preliminary question whether the failure of the Frenchman to obtain his parents' consent pertained to "formality," under both French and English conflict of laws rules, referable to the place of celebration; or whether it pertained to capacity, respectively referable to the state of the nation or domicil. Since France regarded the question as one of capacity, the English view that it was one of formality results in a lack of uniformity in solution although, were it not for the different qualification of the question, the primary conflict of laws rules of the two states would not have so resulted. The failure, however, of the English decision to make explicit the problem of qualification, tends to obscure the basic nature of the difficulty."[14]

One is tempted to ask which statement is "elliptical," that by the court or that of our book? To drag in qualification seems to me to create a difficulty where none existed before. What had the English court to decide? No more and no less than what was the rule of English conflict of laws with respect to the influence of lack of parental consent upon the validity of a marriage. From the precedents, the court derived the following rule: The question of whether or not an official shall assist in a marriage without being assured of the consent of the parents of the parties, and of how the

[12] [1908] P. 46 (C. A.).

[13] P. 292.

[14] Pp. 292, 293.

validity of a marriage is affected by the lack of such consent, is determined by the law of the place where the marriage is celebrated. As soon as the court had found that this was the rule of English conflict of laws, the case was decided. The observation that the French conflict of laws rule was different was interesting for the English judge to note, but it could not influence his decision because English courts must follow the English rules of conflict of laws, and no others. The attempt to look to French and to English conflict of laws simultaneously can have no other effect than that of unnecessarily complicating the problem. Only for a law reformer bent on international uniformity of decision is it important to know that the rules of English and French conflict of laws lead to different results. He may consider how a reform of this undesirable situation might be brought about, perhaps, by suggesting an Anglo-French treaty. For an English judge, however, the French rule is irrelevant.

In all three cases, *Boaz v. Swinney*, *In re Riemann's Estate*, and *Ogden v. Ogden*, the court had simply either to find out what choice-of-law rule was already established at the forum or to establish for the forum a new choice-of-law rule for a new case. In this category belong, likewise, the following cases of Messrs. Harper and Taintor's chapter on qualification:

Minor v. Cardwell:[15] Shall the problem of whether or not execution can be levied upon a married woman's chattels by her husband's creditors be decided by the law of the situs of the chattel or by the law of the matrimonial domicil?

Woodward v. Woodward:[16] Shall the moment at which a guardian may be called to settle with his ward be determined by the law of the ward's domicil or by the law of the court under which the ward's estate is administered?

St. Louis-San Francisco Railway v. Cox:[17] Shall the problem of whether or not a party who has settled a personal injury claim by compromise should be allowed to sue for an annulment of the compromise and full compensation for his injuries without previously having tendered the money received under the compromise, be decided in accordance with the law of the forum or in accordance with the law of the place of the compromise?

Precourt v. Driscoll:[18] Shall the question of which party has the burden of proof of contributory negligence be determined by the law of the forum or by the law of the place of the accident?

Sottomayor v. Barros:[19] Shall the prohibited degrees and the effects of a marriage entered into within the prohibited degrees be determined by the *lex loci celebrationis* or by the *lex domicilii*?

The problem of every one of these cases was simply that of finding or

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[15] 37 Mo. 350, HARPER AND TAINTOR 259 (1866).

[16] 87 Tenn. 644, 11 S. W. 892, HARPER AND TAINTOR 267 (1889).

[17] 171 Ark. 103, 283 S. W. 31, HARPER AND TAINTOR 272 (1926).

[18] 85 N. H. 280, 157 Atl. 525, HARPER AND TAINTOR 275 (1931).

[19] 3 P. D. 1 (C. A. 1877), HARPER AND TAINTOR 293.

establishing the proper choice-of-law rule of the forum. The appearance that they might have something to do with qualification is created solely by the fact that the terms in which the traditional choice-of-law rule is expressed are too broad and too vague.[20] In *Ogden v. Ogden*, for instance, the English choice-of-law rule was said to be that the formalities of a marriage ceremony were determined by the *lex loci celebrationis*, while the intrinsic validity of a marriage was governed by the *lex domicilii*. If the choice-of-law rule is expressed in this form, the problem of the case appears, indeed, to be that of determining whether parental consent belongs to the formalities or to the intrinsic validity of a marriage.

Quite different is the problem which is presented by such cases as *Bethell v. Bethell*.[21] In that case a deed for land in Missouri was executed in Indiana between residents of Indiana. Litigation was started in Indiana as to whether or not certain covenants should be regarded as being implied in the deed. No such covenants would be implied in such a deed as that under consideration by the law of Indiana, while they would be implied in it under the law of Missouri. The Indiana court held that, while the law of Missouri alone could determine whether a deed for Missouri land was sufficient to pass the title, the *lex loci contractus* determined what personal obligations arose out of the transaction. The case is simply an illustration of the so-called *dépeçage*, *i.e.*, of the phenomenon whereby two different aspects of a transaction may be governed by two different laws. It seems that it was pleaded to the court that under the conflict of laws rule of Missouri the question of what covenants were implied in a deed was governed by the law of the situs of the land. This allegation was properly disregarded by the Indiana court, which had to apply the choice-of-law rules of Indiana and not those of Missouri.

A third group of problems is presented by the cases of *Pfeifer v. Wright*[22] and *Wood & Selick v. Compagnie Générale Transatlantique*.[23] In the *Pfeifer* case, the illegitimate daughter of a resident of Kansas sought to establish her right to a share in land left by her father in Oklahoma. She alleged that, under a statute of Kansas, she had obtained, through recognition by her father, the legal position of a legitimate child. The Oklahoma court found that the Oklahoma rules of conflict of laws were as follows:

(1) rights of intestate succession to land are determined by the *lex situs;*

(2) the question of whether a person is to be regarded as a legitimate child of another person is determined by the *lex domicilii.*

The court then proceeded to interpret the statute of Kansas in order to find

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[20] For further discussion of this problem see Rheinstein, *Comparative Law and Conflict of Laws in Germany* (1935) 2 U. OF CHI. L. REV. 232, 265, HARPER AND TAINTOR 225, 229.

[21] 54 Ind. 428, HARPER AND TAINTOR 260 (1876).

[22] 34 F. (2d) 690 (N. D. Okla. 1929), HARPER AND TAINTOR 266, 732.

[23] 43 F. (2d) 941 (C. C. A. 2d, 1930), HARPER AND TAINTOR 282.

out whether or not, under Kansas law, the plaintiff was to be regarded as a legitimate child of the decedent.

In the shipping case, the French Statute of Limitations was pleaded in a New York court against a claim which would not have been barred by the Statute of Limitations of New York. The court, again, began by examining the conflict of laws rules of New York which it found to be as follows:

(1) the question of whether or not a contractual claim is terminated by lapse of time is determined by the *lex loci contractus*;
(2) the question of whether or not enforcement of a still existing contractual claim is barred by lapse of time is determined by the *lex fori.*

Thereupon the court proceeded to interpret the French statute in order to find out whether, under its terms, the lapse of time had resulted in the termination of the claim or only in a bar to its judicial enforcement.

In none of these cases does the decision depend on a different "qualification" of the facts under two different laws. They are simply concerned with the interpretation of a foreign statute referred to by the conflict of laws rules of the forum.

There remains a final group of cases which may be illustrated by *Harral v. Harral.*[24] An American died in France where he had lived for several years prior to his death. Litigation as to his inheritance arose in New Jersey. The court found that the New Jersey rule of conflict of laws was that inheritance as to movables was determined by the law of the domicil. Before answering the question of whether the decedent was domiciled in France or in New Jersey, the court found it necessary to answer the preliminary question as to whether domicil should be determined by the criteria of the law of the forum (New Jersey) or of the law of the country in which the decedent could hypothetically be domiciled (France). An exactly analogous problem arose in the English case of *In re Annesley.*[25] To ask such a question is legitimate. Each court has, of course, to apply no other conflict of laws rules than those of its own country or state. It is quite possible, however, that the conflict of laws rule of the forum contains some blanket concepts to be filled in by provisions of some foreign law. Almost all countries of the European continent and some Latin-American countries have, for instance, the choice-of-law rule that a person's capacity to enter upon legal transactions is determined by the law of the country of which that person is a national. If a German court, in applying this rule, has to determine whether a person is or is not a French national, it does not decide this question under the criteria of the German law of nationality but of the French law on this subject. The determination of whether or not a person is a national of a particular country is left to the law of that country and is not assumed by the law of the forum. When an American court is faced with

[24] 39 N. J. Eq. 279 (1884), *aff'g* 37 N. J. Eq. 458 (1883), HARPER AND TAINTOR 244.

[25] [1926] 1 Ch. 692, HARPER AND TAINTOR 237.

the question of whether or not a certain person is a British national, it looks to the British Nationality Act, not to the United States nationality laws. This rule is accepted everywhere.

Shall a person's domicil be determined in the same way? Shall an American court, for instance, in applying the American choice-of-law rule that succession to movables is governed by the law of the decedent's domicil, consult the American concept of domicil in order to find out whether or not a decedent was domiciled in Italy, or shall it apply the Italian notion of domicil? This question can be answered only by considerations of legal policy. We have to ask why the rule of American conflict of laws refers the determination of rights of succession to a person's movables to the law of that person's domicil. Is it because we in America think that the country where the decedent is thought to have had his last home, has the closest connection with the problem, or because *we* grant the power to determine those rights to that sovereign who claims that person as domiciled in his territory? If stated in this way, the problem requires extensive research in legal history and policy. The answer usually accepted in the United States is that the domicil of a person must be determined by the American notions of domicil and not by the notion of some foreign country which may be essentially different from ours. Similar considerations lead to similar results with respect to other concepts used in our conflict of laws rules. But there are exceptions; American conflict of laws rules are different in many respects for movables and immovables. Succession to movables, for instance, is determined by the law of the decedent's domicil, while succession to immovables is governed by the law of the situs. Which law determines whether a certain object is movable or immovable, the law of the forum or the law of the physical location of the thing in question? The usually accepted answer leaves the determination to the law of the physical location of the thing. Why? Because the sovereign of that place has the actual power over the thing. If we classify ("qualify") it as movable while he calls it immovable, our rule that it should pass to the person determined by the law of the decedent's domicil is no more than a pious wish.

This problem of whether certain concepts of the conflict of laws rules of the forum should be determined by the notions of the law of the forum or by a foreign law may, if one wishes, be called a problem of "qualification."

Why then, we may ask, after this long discussion, does qualification occupy such a large place in French doctrine of conflict of laws? It can probably be explained by the great concern felt by the French scholars for the ideal end of the conflict of laws, *i.e.*, international uniformity of decision. Differences in the meaning of apparently identical legal terms and concepts are indeed an obstacle to the achievement of that end. The doctrines brought together under the label "*questions de qualification*" are ingenious attempts to overcome this obstacle. Such attempts are futile, however, as long as different countries have different choice-of-law rules; and choice-of-law rules of different countries will be different as long as ideals about the community interest and distribution of power between various social groups are different in different parts of the world. Like all law,

conflict of laws rules are expressions of political power and of social ideals. Such differences cannot be ironed out by learned doctrines.

Two contradictory ideals permeate the entire field of conflict of laws: the ideal of international uniformity of decision, and each country's desire to protect that system of society which it has adopted for itself. "Public policy" counteracts, to a large extent, the application of a foreign law, whose application might be demanded by the ideal uniformity of decision. The French scholars have long regarded public policy as the devil of the conflict of laws who ought to be fought by all right-minded people. The result of this attitude is that the French courts themselves have refused to follow the French professors, although, generally, French courts are inclined to look for guidance to learned treatises and articles. In the field of conflict of laws, the French courts have stubbornly refused to follow certain teachings of the theoreticians. Although resort to public policy is detested by the professors, the courts are unwilling to apply a rule of foreign law when they feel that decision according to French law would be more to the French public interest.

The absence in Messrs. Harper and Taintor's book of any chapter on public policy, which might appear surprising in a work in which the general problems of the conflict of laws are so strongly emphasized, can probably be explained by the dislike of the French theorists for public policy.

I have dwelt on this topic so extensively because I believe that a book of the excellent qualities of Messrs. Harper and Taintor's work will be influential; that more discussion is desirable, however, before qualification is admitted to an established place in American conflict of laws.

On the much discussed problem of renvoi, Messrs. Harper and Taintor present a more extensive collection of materials than any other American book. Not only are the American and English cases reproduced, but also the leading French cases and the writings of their critics. While the Court of Cassation and the majority of the lower French courts have applied the renvoi since the famous *Forgo* case of 1882,[26] it is rejected by theorists and by a minority of lower courts. The considerations of legal policy which underlie the highly conceptual French discussion might perhaps become more conspicuous if the authors had reproduced not only the final decision of the *Forgo* case but also its earlier stages, especially the pleadings of the Attorney-General.[27]

In this and other respects Messrs. Harper and Taintor have undertaken to utilize for American conflict of laws the wealth of ideas of the French theorists. This is a great achievement which may exert a considerable influence on future developments. Perhaps, it may also induce others to pay attention to the vigorous German school of conflict of laws, which pays greater attention to political realities than that of France and seems, therefore, to be nearer in spirit to American law.

By its very nature, Conflict of Laws, or, as it is called in Civil Law

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[26] Sirey 1882.1.393, Clunet 1882.64, HARPER AND TAINTOR 296.

[27] Sirey, *loc. cit. supra* note 26.

countries, Private International Law, is a topic of international interest which needs international collaboration for its satisfactory development. American conflict of laws has too long emphasized interstate problems at the expense of its international aspects. Cases dealing with international conflicts of laws occupy a conspicuous place in Messrs. Harper and Taintor's book. For didactical purposes, such cases are perhaps better illustrations of the nature and the peculiar problems of conflict of laws than interstate cases. On the other hand, it may be regretted that the book does not contain a chapter on the influence of the United States Constitution on problems of interstate conflict of laws. The leading cases on this topic are almost all there, but their importance might be more apparent if they were assembled in one chapter.

I have voiced criticisms in this discussion of Messrs. Harper and Taintor's book. They are meant as expressions of different opinions on controversial points, but not as reflections on the scholarly or didactical value of the work, which is evidenced throughout in its provocative originality. Let it be said in conclusion that in all parts of the book the materials, both cases and extracts from learned writings, are well chosen. The cases represent the right proportion between old classics and illustrations of problems of our own times. Wherever the authors voice their own opinions, they do so in a well-considered, forceful and thought-provoking way. With its great wealth of materials, its clear arrangement, and its numerous and extensive authors' notes, the book will not only be welcome in academic teaching but will also be helpful as a handbook for practitioners.

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EQUALITY AND THE LAW. By Louis A. Warsoff. New York: Liveright. 1938. Pp. xi, 312.

"Case law resembles a patch-work quilt; it is strong and serviceable, but to see the pattern, you must have distance. . . ."[1] Particularly is this true of that large body of decisions which has been evoked by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. Examination of isolated cases interpreting these clauses reveals little; true evaluation of the particular case is possible only when its proper place in the whole judicial current is first charted. And it is with a clear and scholarly understanding of this necessity for perspective that Professor Warsoff has prepared his "Equality and the Law," a study of the equal protection clause of the Fourteenth Amendment.

Starting with the famous Chapter 39 of the Magna Charta and the subsequent interpretation or, better said, misinterpretation of its law of the land provision, the author first traces the concept of legal equality in England before the American Revolution and in the United States in the pre-Civil

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[1] Hough, *Due Process of Law Today* (1919) 32 HARV. L. REV. 218.