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The Conflict of Laws: A Comparative Study: Vol. I

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tions were, in effect, compulsory in character, and arbitration awards had behind them the sanction of the government. In peacetime, the Constitution does not allow compulsory arbitration and judicial jealousy limits the effective enforcement of even voluntary awards. Arbitration, to become a lasting instrument of peaceful settlement of labor disputes, must, like the United Nations in the international field, win acceptance of all parties involved and prove its effectiveness.

Illustrative of the danger of attempting to advise labor arbitrators on the basis of the War Labor Board experience is the assertion repeatedly made in the book that an arbitrator must never render a decision that represents a compromise. There may be some slight support for this position during a war period when arbitrations are conducted under executive orders having the force of law and enunciating a fixed governmental policy. It is plain piffle, however, for normal times. Every experienced and successful arbitrator knows that reasonable compromise is the foundation upon which a successful arbitration structure necessarily depends.

The authors not only deprecate compromise but they hope that arbitrators will rely on precedent and express the wish that one of the developments of the future will be a set of labor arbitration reports. Heaven save us from this eventuality. Arbitration is already in sufficient danger of being enveloped by legalisms without being ruined by that grubby search for precedent which has become all too characteristic of an American lawyer's art.

The growing importance of labor arbitration calls for adequate study of the subject. The present work does not satisfy the need.

ARTHUR J. GOLDBERG*

Conflict of Laws, The; A Comparative Study. Vol. I. By Ernest Rabel. Ann Arbor: University of Michigan Press, 1945. Pp. lvi, 754. \$12.50.

This book is unique in legal literature. For a field as large as that of conflict of laws, the legal systems of the world are presented fully, accurately, and critically. This work has been done not by a host of experts from various countries, but by one man, whose penetrating mind has welded together all of the vast material into a coherent whole.

The author of this unique work has had an unusual career, beginning with his legal training in Austria and supplemented by study in Germany and France. He was a teacher of Roman Law and modern Civil Law, and sat as a judge on superior courts in Germany and Switzerland, as well as serving on the bench of the German-Italian Mixed Arbitral Tribunal and on the World Court at the Hague. He has carried on basic research in papyrology and in the obscure sources of classical Roman Law; and as founder and, for many years, director of the Kaiser Wilhelm Institute of Foreign and International Private Law, he initiated the fertile research in comparative law which constitutes one of the principal roots for the revitalization of German legal science which had so promisingly begun in the Weimar Republic. As adviser to the Wilhelmstrasse, he was actively engaged in the practice of international law. When his work in Germany was cut short by the Hitler regime, William Draper Lewis, the farsighted director of the American Law Institute, seized upon the opportunity of having the *Restatement of Conflict of Laws* supplemented by a companion work which would present to American attorneys the conflict of laws of the principal foreign countries. He initi-

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ated Rabel's work, which was carried on for the first years under the auspices of the American Law Institute, and later under those of the University of Michigan Law School. To these institutions the American legal profession owes a debt of gratitude for having made possible the writing and publication of this masterpiece of legal thought and learning.

Mr. Lewis' desire to make available to Americans the ideas and experiences of foreign countries in the field of conflict of laws has been well justified. In contrast to such other branches of the law as contracts or property, whose basic ideas, policies and concepts have been elaborated in a continuous development of many centuries, conflict of laws is, at least in the United States, a comparatively young field, which has not yet become fully crystallized and which is still in need of suggestive ideas. While the cases of municipal law are primarily limited to the territory of one country, those of the conflict of laws by their very nature transcend the national boundaries. If the conflict of laws is even to approximate the fulfillment of its purpose, the discussion of its problems must be carried on upon an international scale. Upon the continent of Europe such an international discussion has long been in progress. Rabel has now summarized for Americans the arguments and results of these discussions. Thus he has made it possible for them to participate in it, to utilize it for themselves, and to contribute to it their own ideas which, as Rabel's work proves, are in many respects ahead of foreign developments. While international unity of decision in a given case has often been postulated as the ideal end of the conflict of laws, Rabel's work also indicates why the complete attainment of this end is not possible. In each country the conflict of laws is a part of the national law and is thus influenced and molded by varying national ideals and policies. Uniformity in the rules of conflict of laws is therefore not only impossible, but also undesirable as long as varying views are held. These variances occur not only in different countries, but also in different parts of the same country on such problems as those of divorce, debtor protection, automobile liability, or parental power. Thus Rabel has not written a book advocating the uniform adoption of any particular rule or system. He simply wants to present the rules, of which there are few, and the trends and ideas, of which there are many, to ascertain not merely how they look on paper, but how they work in practice, and how well or how badly they serve national policies and affect interstate or international dealings. In addition to the author's vast learning in literature, legislation, treaties, and cases, his work reveals the eminently practical sense which he has developed through the long years of his judicial and advisory activities. As director of the Kaiser Wilhelm Institute of Foreign and International Private Law, he was informed of every case involving problems in the conflict of laws that was pending in any court of Germany and consulted on those cases which presented difficulties. Thus he became aware not only of the existence of these problems which are unknown to most of the all too numerous theoreticians in the conflict of laws, but also of the needs and attitudes of judges, lawyers, parties and the public. Although he always writes as a scholar, he is not a theoretician.

The American Law Institute's original plan to have the work patterned upon the *Restatement*, i.e., to have it written as a running commentary accompanying it section by section, soon turned out to be impracticable. The systematics of foreign laws are so different from that of the *Restatement* and from each other as to preclude such treatment. With the ready consent of the American Law Institute, the author wisely decided to follow his own system of arrangement which, given the nature of the task, is

closer to European than to American notions. While Professor Rabel is thoroughly acquainted with American law, he has not severed himself from his European background. He has succeeded in writing a lucid text for Americans, but it remains a text by a European scholar. That fact is apparent not only in the author's style, but also in his approach to and selection of the problems. The problems treated in this volume are numerous. Professor Rabel's work has a European flavor. That fact may not always make for easy reading, but it gives the book a special charm. The thoughtful reader is given an opportunity to see a first-rate European legal mind at work. In that sense the book enriches comparative law, not only by its contents but by its very method.

The present volume is only the first of a work intended to comprise four. After thoughtful and stimulating forewords by William Draper Lewis and Hessel E. Yntema, the representatives of the two organizations under whose auspices the work is being published, this first volume contains a brief, but masterly presentation of the history of the conflict of laws, a discussion of some of its general problems, and, as its primary section, the law of persons and of family relations.

The chapters on general problems (characterization, *renvoi*, purpose of the conflicts law and structure of its rules) are not extremely readable. The reader may be advised to postpone their study to the end. The general problems will have more meaning for him when he has first acquainted himself with concrete applications and with the author's method, style and outlook. But the study of these chapters should not be omitted as such effort will be well rewarded.

The chapter on "The Personal Law" introduces the reader to the principle of nationality which, in the majority of the European and Latin American countries, plays a role even more important than that played by the concept of domicile in the common law countries. In the following chapters on marriage, marital property rights, divorce, annulment, and parental relations, the effects of the two principles are illustrated by concrete situations. While Rabel's own conclusions are carefully balanced, American readers will probably heave a sigh of relief that their law is not plagued by the intricacies of the nationality principle. In his present activities in the Legal Division of the Military Government of Germany, this reviewer can only add that his task would be easier, but also less interesting, if German courts were not required to investigate into the often obscure nationality of Displaced Persons and the even more obscure substantive laws of such countries as Poland, Latvia, or Rumania.

Professor Rabel's *magnum opus* contains such a wealth of material, thought, and suggestive ideas that it would go far beyond the scope of a book review even to attempt a critical discussion. This reviewer hopes in the near future to be able to devote some special article or articles utilizing the author's theses in an approach to the American conflict of laws. It has already been stated that his method is remarkably devoid of dogmatism. He has played a leading role in terminating that trend of European thought which attempted to establish an entire system of conflict of laws upon a few principles postulated a priori; a trend which is not unknown in this country, and which has exercised an unfortunate influence upon the *Restatement*. Rabel was one of the leading founders of that school which was gaining ground in Republican Germany and which attempted to derive the solution for any particular conflict of laws problem from the particular exigencies of that concrete situation. But Rabel is still inspired by the notion that, ideally, although unattainably, the conflict of laws principles should aim at international or interstate uniformity of decision. This notion can be questioned. The

aim of the conflict of laws may be stated more modestly as the protection of expectations which are regarded as justified under the principles of legal policy prevailing in the forum. Like any other branch of the law, conflict of laws is inspired by the ideal of justice, but this ideal may well be attained, or at least, pursued, without postulating an unattainable international uniformity of decision. Everywhere courts tend to decide cases under their own substantive law, the *lex fori*. The decision of a case under foreign law is always cumbersome and time-consuming. It should not be attempted unless it is indicated by an urgent demand of justice or international policy. A clear recognition of this basic notion will alleviate the task of courts and lawyers and will destroy many of the subterfuges utilized by the courts in applying the *lex fori* to a case, wherein a broad, dogmatic, or inflexible application of conflict principles would result in a decision predicated on foreign law. The time has come for a complete reorientation of the conflict of laws. Rabel not only presents the necessary materials but also makes a substantial contribution to this process of reorientation to anyone who feels attracted to this task. This book is indispensable to the attorney who is practically engaged in international legal affairs. He will find in it reliable and exhaustive information on the practice of the conflict of laws in Latin America and the Far East, as well as in Europe. The succeeding volumes are eagerly awaited.

MAX RHEINSTEIN*

Economic Freedom for the West. By Wendell Berge. Lincoln: University of Nebraska Press, 1946. Pp. 168.

Wendell Berge, in his new book, presents clearly, concisely, and convincingly the case of the West for relief from monopolies and monopolistic practices which have retarded its economic growth. This he has achieved with a readability seldom found in works treating economic subjects. Mr. Berge makes it clear that the economic development of the West is a matter of concern to the entire nation.

As is natural in view of his service to the nation as head of the Anti-trust Division, Department of Justice, Mr. Berge stresses especially those barriers to economic freedom for the West which arise out of monopolies and restraints of trade in the principal industries. And the antidote, as he sees it, is Western ownership and operation of Western industries. Particularly important is the large production of steel in the West. Mr. Berge believes that "with steel as a center of gravity, other industries will be drawn into the orbit of Western Markets."¹ In view of his convincing discussion of this subject, one must note with some concern that recently the gigantic government-constructed wartime steel plant at Geneva, Utah, has been turned over to "Big Steel" in the East for ownership and operation.

The growing aluminum industry also offers, in the author's opinion, "an open invitation to Western business to apply initiative to the task, because in the final analysis it is not what Government alone may or may not do, but rather what free enterprise actively does that will carry the field for competition or abdicate to monopoly. The latent market for aluminum is tremendous. . . . Western enterprise has a special opportunity to show that in the era of light metals a Western aluminum industry can

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¹ P. 30.