

Directivas fundamentales del derecho internacional privado Puertorriqueño (Basic Principles of the Conflict of Laws of Puerto Rico). By Guaroa Velázquez. Río Piedras, P.R.: private mimeograph, 1944. Pp. 72.

This book by the learned professor of Conflict of Laws at the University of Puerto Rico constitutes primarily a plea for the return to Civil Law principles in the conflict of laws practice of the Puerto Rican courts. When Puerto Rico was annexed by the United States after the Spanish-American War, the Spanish Civil Code was left in force, amended only in a few minor respects. The field of conflict of laws is covered in this code by the following few sections, which reflect the approach that was general in Latin countries in the second half of the nineteenth century.:

The laws relating to family rights and obligations, or to the status, condition, and legal capacity of persons, shall be binding upon the citizens of Puerto Rico, although they reside in a foreign country. [Section 9]

Personal property is subject to the laws of the nation of the owner thereof, real property to the laws of the country in which it is situated. [Section 10]

The forms and solemnities of contracts, wills, and other public instruments are governed by the laws of the country in which they are executed. When such acts are authorized by diplomatic or consular officers of the United States abroad the formalities established for their execution by the laws of the United States shall be observed. Notwithstanding, the provisions of this and the preceding section prohibitory laws relating to persons, their acts or property, and those which relate to public order and good morals shall not be held invalid by reason of laws, decisions, regulations, or agreements in force in any foreign country. [Section 11]

In addition to these general provisions, the code in section 666 allows Puerto Ricans to make wills outside of Puerto Rico in compliance with the laws of the country of execution and to make holographic wills even in a country by whose laws such wills are not permitted. On the other hand, section 667 forbids a Puerto Rican to make a so-called "mystic will" even in countries where such a will is permissible. Article 1277 contains some special provisions as to matrimonial property rights.

As one can readily see, these statutory rules are far from constituting a complete system of conflict of laws. They deal with no more than a few, although important, topics, but a vast field of problems has been left without express statutory regulation. In Spanish times it was clear that the wide gaps left were to be filled in in accordance with those rules and principles which had been developed through the course of centuries by the Civilian lawyers of the European continent. In the nineteenth century the tone in the field of conflict of laws was set particularly by those scholars of France and Italy who advocated the widest possible application of the law of the nationality of the individual or individuals concerned.

When, after the transfer of sovereignty to the United States, Puerto Rican courts had to decide problems of conflict of laws not expressly taken care of in the meagre provisions of the code, they were faced with a new problem: should the gaps still be filled in the method and approach of the Civil Law or should resort rather be had to the principles of conflict of laws that had been developed in the United States? The second solution has been adopted by the Insular Supreme Court. For this attitude the court is criticized by Professor Velázquez. A good case can indeed be made for such a return to the Civil Law. The statutory provisions on conflict of laws are contained in Puerto Rico in the Civil Code, a comprehensive codification of the Civil Law as it had been in force in Spain. In spite of the change of sovereignty the Civil Law character of

the private law of Puerto Rico has still been maintained, and conflict of laws may well be regarded as a part of private law.

However, good arguments could also be adduced for the court's point of view. Civil Law has been supplanted by Common Law in numerous, perhaps even the most important, branches of Puerto Rican law, namely, in the fields of public law, procedure, penal law, the law of corporations, negotiable instruments, and other commercial transactions. Furthermore, American-trained judges have been appointed to the bench of Insular courts both lower and appellate. These judges have introduced Common Law notions and methods even into those codes and statutes of Puerto Rico which are indubitably Civil Law codifications. The confusion which has been created thereby is regrettable and a return to a more consistent application of the Civil Law would be well justified in these fields. It may be doubtful, however, whether such a return would be advisable, or even possible, in the field of conflict of laws. Application in Puerto Rico of the rules of the general conflict of laws of the United States results in uniformity of decision between Puerto Rico and those regions with which the people of the island now have the bulk of their commercial and other social relations. Furthermore, how could the principle of nationality be applied in intra-United States relations? Puerto Ricans are United States nationals, just as are residents of New York, Illinois, or Hawaii. It is true that various statutes deal with a legal institution called Puerto Rican nationality. Certain individuals are regarded as Puerto Ricans, but it seems that this Puerto Rican citizenship means no more than domicile in Puerto Rico. Although the text of the applicable statute is not entirely clear, it seems to be undeniable that a native of Puerto Rico ceases to be a citizen of Puerto Rico when he becomes domiciled in another part of the United States,

Problems analogous to those arising in intra-United States cases also arose under the Spanish regime. In spite of the codification of 1888, the law of Spain was not completely unified. In regions other than Castile the provisions of the Civil Code applied, and still apply, only in default of a provision contained in the local laws, the so-called *fueros*. For the inter-regional conflicts which are to arise under this system the Spanish Code itself provides, in section 15, for the application of the law of the region of origin (*origen*) or residence (*residencia*) of the *de cuius*, concepts which are closely analogous to the concept of domicile as defined in the United States. Resort to the notion of domicile in conflicts of a non-international character is quite in accord with Puerto Rican-Spanish tradition.

For international conflicts in matters of personal states and family rights the Puerto Rican Code contains an express provision only for Puerto Ricans residing abroad. It is silent, however, as to foreigners living, or transacting business, in Puerto Rico, as to non-Puerto Rican citizens of the United States living, or transacting business, abroad, and as to foreigners, living, or transacting business, in a third country. As to them, as well as with respect to all other problems of conflict of laws not expressly dealt with in the code, the courts have to apply that method to which they are referred in section 7 for all cases where "there is no statute applicable." Such cases "the court shall decide in accordance with equity, which means that natural justice, as embodied in the general principles of jurisprudence and in accepted and established usages and customs, shall be taken into consideration."

In Spanish times it was clear that these general principles of jurisprudence were those of the Civil Law. Today it is no longer clear that that system still occupies the

position of subsidiary source of law of Puerto Rico. There has been an official reception of the Common Law in those fields which have been mentioned above, and an unofficial, and perhaps illegitimate, but still effective penetration of Common Law thoughts and methods even into the Civil Law precinct of private law. It may, perhaps, be going too far to say that Puerto Rico has become a jurisdiction of the Common Law in which the Civilian private law constitutes no more than an exception. But it can also not be denied that that legal tradition which determines the procedural and public law of the Island, is more than a patch upon a cloth of Civil Law fabric. As far as the general character of Puerto Rican law is concerned, the question of dominance is an open one. As far as practical considerations are important, resort to Common Law conflict of laws might well appear preferable.

The difficulties to which resort to Civil Law principles might lead, can be illustrated by one of Professor Velázquez' own chief arguments.

Professor Velázquez criticises the Insular Supreme Court for having repudiated the Civil Law principle of unity of succession in cases of decedent estates. He thinks that the succession, testate or intestate, to the estate of a Puerto Rican should be determined by Puerto Rican law irrespective of where the various assets are located. How could such a principle be carried out? Immovables left by Puerto Ricans in some state of the continental United States are *de facto* within the power of the courts of the state of the situs. These courts rather than those of Puerto Rico are the ones who have actually to determine to whom the land is to descend, and these courts will, of course, simply look to their own laws, rather than to those of Puerto Rico. The Puerto Rican courts can exercise no direct power over such assets. If they should attempt, however, to apply Puerto Rican law in cases where such assets are concerned indirectly, for instance, in the determination of the extent of the indefeasible share of the surviving spouse or of a decedent, nothing but confusion would result.

The question whether common Law or Civil Law should be resorted to as subsidiary law behind the statutory provisions of Puerto Rican conflict of laws is a complicated and important one. No attempt can be made here to marshal all the arguments for one or the other side. So much should be said, however: the answer should be found more on the grounds of reason, policy, and expediency than on the basis of emotional preference for the Civil Law. One may be a good Puerto Rican patriot and yet recognize that Puerto Rican relations are more with the United States than with foreign countries and that resort to Common Law principles of conflict of laws might, therefore, be more helpful to Puerto Rico than resort to Civil Law.

In addition to constituting a plea for a return to the Civil Law, Professor Velázquez' essay is also intended as an educational tool for his students. For this purpose the little book seems to be well suited. It contains a most attractive presentation of the historical basis of the conflict of laws of both Civil Law countries and the United States, a clear exposition of such tortuous topics as *renvoi* and qualification, a very practicable chapter on ascertainment and proof of foreign law, and an excellent survey of the Puerto Rican leading cases, which is useful to everyone interested in Puerto Rican conflict of laws. This first comprehensive restatement of the conflicts of law of Puerto Rico constitutes a highly welcome enrichment of the literature.

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