Book Review. Principles of Conflict of Laws by George Wilfred Stumberg

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do we find the subject treated as a whole. In other words, by the utilization of legal concepts peculiar to the Anglo-American law, a distinct contribution to the Roman law can be made. The negative of this situation may likewise be true. For example, neither the Roman nor our law possesses the well-defined sphere of 'commercial' law, so familiar in 'civil' law countries. As a result, there has been exceedingly little study of the Roman commercial law by continental. The presence of commercial legal principles in the various fields of Roman private law, however, is a situation perfectly reasonable to the Anglo-American lawyer, and studies in business organization, competition, and the like, should prove exceedingly fruitful. The reviewer regrets that the authors did not proceed further along these lines in their comparative law study; undoubtedly the answer is that individual studies along these lines are necessary before comparison can be made.

Professors Buckland and McNair deserve our warmest thanks for presenting us with a distinct contribution to the literature upon the ancient Roman law.

A. Arthur Schiller*


Religion and the conflict of laws have much in common. Each has many faiths. Their creeds are evangelical, and their doctrines frequently pagan. No heavenly discourse marks their society. Into this struggle Stumberg has sent a new textbook on the Conflict of Laws. He enters as an analyst rather than as an apostle or prophet. This has been both a happy and an unhappy choice.

It is a happy choice, for he escapes the bias of dogma and achieves an objective evaluation of theories which emphasizes the unlimitability of classifications and the delusion of conceptual consistency. It is an unhappy choice, as every attempt at impartiality is an unhappy choice, in that its narration lacks the force and evangelical enthusiasm of faith. Likewise, in preserving impartiality, the focus often becomes uncertain, the outline obscure, and the details confused. But these defects should be minimized. It is more important that the book seeks rude reality rather than divine doctrine.

Although evidencing preference for the more realistic faiths, Stum-

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berg seems to have done them some disservice. In the introductory chapter he summarizes their theory as follows:

"Another group of modern writers assert that the decisions do not support the theory of enforcement of foreign created rights. They contend that problems of Conflict of Laws should be solved by consideration of expediency."  

Those favoring the "local law" theory have asserted that the decisions do not support the "foreign-created right" theory, but they would be the last to assert that the problems of conflicts should be "solved" by considerations of expediency. Of course, in one sense all law and society is built upon expediency—that is, the legal machine gets less sand into society's spinach than does self-help and private warfare. But at best "expediency" does not explain the legal process nor does it describe what courts in fact do. It is an argument rather than an explanation. It is true that in the process of deciding cases a judge, if he is an intelligent judge, will, in addition to the techniques of deductive logic and judicial precedent, consider the consequences of his decision, but the techniques will condition the consequences as will the consequences condition the techniques. No adequate description of the process can be made which destroys this "oneness." It is this demand for greater accuracy in the description of what judges do in fact which distinguishes the local law theory. Its concern is with what courts do; not with what they should do.  

In the same vein this review might be extended many pages in the discussion of dangerous generalities in particular conflict situations. But this would miss the purpose and scope of Stumberg's book. It is a volume for the student as yet unfamiliar with the details of the subject. It is a reading glass and not a microscope. 

There is a malady prevalent among all book reviewers (a malady to which I succumb) causing them to discuss not the book written, but the book which might have been written. Thus it seems to this reviewer that the deficiencies of Stumberg's text are deficiencies of the orthodox approach to the subject. Emphasis, at least in the common law coun-

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2. See, Cook, The Logical and Legal Bases of the Conflict of Laws (1924) 33 Yale L. J. 457. Perhaps the standard of expediency is suggested in part by Cavers, A Critique of the Choice of Law Problem (1933) 47 Harv. L. Rev. 173, but it is believed that even this article does not go so far as Stumberg suggests.  
3. For example, see, the discussion of multiple-domicile (p. 33); multi-jurisdictional torts (p. 163-169); contract obligation, performance, and discharge (p. 219); and the problem of Polson v. Stewart (p. 345-348). In all these instances brevity has resulted in narration rather than analysis.  
4. Stumberg himself has told us in his preface that the book does not "make any pretense at being exhaustive." For the student who wishes greater detail the author has furnished a bibliography of unusually critical law review articles and court decisions.
tries, has been upon the details of substantive law rules as varied by multi-jurisdictional situations. Conflicts has been treated as a cross section of domestic law, and many third year students elect it because it is a "good review course." This overlooks the fact that the significant problem is not the law to be applied, but rather the technique for applying one or more rules of law from one or more jurisdictions.

Cook has pioneered this approach with law review articles which are now classic. As yet no treatise exists which attacks the problem significantly. The Restatement was disappointing. And yet a brighter day may be near at hand. Harper and Taintor in their new casebook have experimented with this approach. For example, the first 350 pages of their volume are devoted to "Foreign Elements in Legal Relations," and their materials are selected to illuminate the judicial process rather than substantive law structure. Experimentation in this direction is a necessity, and we can only hope the day is not too distant when a thorough-going treatise will adopt this plan of treatment.

But back to Stumberg. These general remarks should not be regarded as a criticism of his work. It must be remembered that he has written a student text for use in Conflict courses in American law schools as those courses are taught today. The book will quench the thirst of the beginner; upon the expert it will inflict the punishment of Tantalus.

FRANK E. HORACK JR.*


The book contains less than one third as many reported cases as are found in Campbell's Cases, and less than one half as many cases as there

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