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Internationales Zivilprozessrecht. By Erwin Riezler.

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It may also be that the authors abstained from including such analytic material lest they be accused by many law professors (who should know better) and law students (who are unsophisticated victims of "bias-baiters") that they were biased in their selections — either "pro-management" or "pro-labor." Disregarding for the moment the disdain with which such charges should be treated, the fact remains that there is enough "pro" and "con" analytic material available so that the authors could have included "both sides of the story," thereby pleasing (almost) everybody — the law professors, the law students, and the publisher (to whom the volume of sales is of more than passing importance).

But despite this shortcoming in the selection of the institutional material, the volume has the great merit of at least attempting to deal with the main problem of labor law training — namely, how to teach both the "purely legal" and the institutional aspects of collective bargaining. And as such it is recommended to those faculties that look upon law as a constructive social force rather than an instrument to be exploited to the fullest for personal gain.

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Joseph Shister

INTERNATIONALES ZIVILPROZESSRECHT. By Erwin Riezler, professor in Munich.

XIII and 710 pages. (Nr. 20 der Beiträge zum ausländischen und internationalen Privatrecht. Herausgegeben vom Kaiser Wilhelm-Institut für ausländisches und internationales Privatrecht. In Gemeinschaft mit Walter de Gruyter & Co., Berlin, Verlag J. C. B. Mohr (Paul Siebeck) Tübingen (1949).

As the author emphasizes in his preface, the book is an "attempt" to present a *comparative* discussion of the international procedural law.

The author in his modesty speaks of an "attempt," but the book is much more. To explain this to American readers means to point out that courses or books on private international law on the Continent generally do not extend to jurisdictional and procedural questions whereas here jurisdictional problems constitute an essential part of conflict of laws, and procedural questions are usually taken up in connection with the subject of "substance" and "procedure." The present volume, therefore, undertakes the discussion of the procedural side (in the widest possible sense, as the survey of its contents shows) of Private International Law.

The book is divided into twelve chapters. The *first* deals with introductory matters such as the concept of international procedural law and its sources, then with treaties, the freedom of parties to bargain on the application of legal rules, and with comprehensive if ever so concise historical outlines, as well as

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with the problem of characterization and the connections between international procedural law and private international law (in the European sense).

In the *second* chapter the author discusses the problem of nationality and citizenship as well as that of stateless persons, of domicile and residence and that of ethnic group membership ("Volkszugehörigkeit"). There is nothing in the book which would indicate that the author was taken in by Nazi racial ideologies, save for the word "*völkisch*" which has an aroma reminiscent of Nazi thought.

With the *third* chapter the author enters the field of jurisdiction. He asks and answers the question as to how far the jurisdiction of a state or country can go if the decisions of its courts should be recognized in other jurisdictions. It is in this connection that the author discusses stipulations by which the parties agree upon a certain jurisdiction exclusive of all others. This is a point in which our courts take a view diametrically opposite to that prevailing in most of the European countries, including Great Britain and Sweden (since 1942).

The *fourth* chapter deals with the status of foreigners in civil proceedings and the *fifth* chapter approaches the problem of the influence of a pending procedure in one state upon an action concerning the same issue and the same parties in another. Questions of evidence are the subject of the *sixth* chapter while the *seventh* chapter is partly devoted to the problem of proving foreign law, a discussion followed up in the *eighth* chapter entitled "Appellate Review on the Question Whether the Application and Interpretation of the Foreign Law was Correct."

The scope of chapter *nine* is very wide; it considers in detail, in 90 pages, the question of recognition and enforcement of foreign decisions. The reader finds in various subchapters a special disquisition on the law in Germany, Austria, France, Italy, Great Britain, as well as the treaty law which springs from treaties adhered to by Germany.

The book proceeds in chapter *ten* to the subject of arbitration and arbitral decisions which means the question of the enforcement of foreign arbitral determinations in the forum and includes also a discussion of a foreign compromise entered into before arbitrators. The book concludes with chapters *eleven* and *twelve*, the former of which deals with execution, arrest and injunction while the latter discusses legal assistance between foreign authorities, including service of process. An appendix takes up material which the author could not use, for the obvious reason of the restrictions under which German scholars had to labor for so many years. A topical index is added.

It is obvious that within the limits of a book review only a very few points can be discussed.

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As so many European legal scholars, Professor Riezler is mistaken as to the significance and legal nature of the Restatement of the American law (pp. 2, 23, 67), for he thinks it is the controlling source of law. Such an opinion must be rejected, particularly when applied to the Restatement of the Conflict of Laws.

On the subject of the effect of war on treaties involving matters of private international law including international procedural law the author seems to overlook that in more recent years the view advanced by him that a war is presumed to terminate a treaty (p. 28) has lost much ground. Judge Cardozo expounded the new approach in *Techt v. Hughes*, 229 N. Y. 272 (1920). The Federal Supreme Court, in *Clark v. Allen*, 331 U. S. 503 (1947) has extended it. In this country, the ground was well prepared by earlier American cases, e.g., *Society for the Propagation of the Gospel v. Town of New Haven*, 8 Wheat. 464 (1823). None of these American cases is even mentioned. Similarly neglected is the English case of *Sutton v. Sutton*, 1 R. & M. 663 (1832).

The statement on p. 105 that the "whole field of evidence is by Anglo-American law characterized as procedural," oversimplifies a situation entrenched in particulars.

The substantial departure of the American law from English law (pp. 193) in the question of the *domicile* of a married woman would have deserved mention. On p. 195 the author speaks again of the American Restatement of the Law of Conflict of Laws as if it were a code containing "rules" on the law of domicile. He is not aware of the rejection of its purely conceptualistic domicile treatment by most scholars and by the courts, for there is no single concept of domicile — the basic error of the Restatement — for all purposes. Compare *Townsend v. Townsend*, 176 Misc. 19 (1946) with *McGrath v. Kristensen* — U. S. —, 71 S. Ct. 224 (1950).

It is rather strange that the author did not become aware thereof for he correctly states for the German law (p. 186) that as for questions involving private-law situations the concept of domicile differs from that used for purposes of taxation or of settlement. That this is also the view of the American laws (not of the Restatement) can be seen from cases such as *Winans v. Winans*, 205 Mass. 388 (1910).

Speaking of the question of whether the effectiveness of a judgment abroad might cause the forum to take a relativistic view toward the jurisdictional issue, the author mentions only the singular provision of the German and Austrian procedural laws concerning jurisdiction over matrimonial matters involving foreigners; for those laws deny jurisdiction in cases where the national law of the parties would refuse recognition to their judgments in matrimonial matters. But those provisions do not reflect in Germany and Austria a general principle. The English law, however, has developed a "principle of

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effectiveness" and this should have been mentioned. See *Tallack v. Tallack*, [1927] P. 211 and *Goff v. Goff*, [1934] P. 107.

Conversely, quite a few European procedural statutes have provided for jurisdiction over a foreigner *in retaliation*. Thus, where the courts in the foreigner's country have asserted the right of jurisdiction on grounds which are not recognized as affording a jurisdictional basis in the forum, the forum may retaliate by exercising jurisdiction against nationals of the offending state on identical grounds. The author mentions only the new Yugoslavian code (p. 205), but the idea originated in the old Austrian Act on Jurisdiction of 1852 § 29. Thence *Franz Klein*, the greatest creative mind in the field of modern European Procedural Law, took it into the new Austrian Act of 1895, § 101, and thus it has become part and parcel of the law of all countries carved out of the Hapsburg Empire, including Yugoslavia.

A problem neglected here, although it comes up, now and then, before American fora engaged in international proceedings, is that of abstention of the controlling law from claiming jurisdiction over the matter involved in the action. The law of many a European country, for instance, claims jurisdiction over a foreigner's estate only where the situs of the estate is wholly or partly within the country.

Such an abstention is not yet a reference to the jurisdiction of the forum of jurisdiction in the forum. It is only an implied declaration of the absence of jurisdiction in the forum. It takes a positive provision — see p. 209 — or a treaty for an interpretation which could argue for a reference of the matter to a certain foreign jurisdiction. The author may, in the next edition, mention the famous case *in re Trufort*, 36 Ch. D. 600 (1887) in this connection, as for treaty-law.

In his presentation of the subject dealing with foreign judgments, the author does not take stock of the American — formerly Anglo-American — peculiarity which requires a new proceeding to enforce a judgment even in a sister-state and has not until quite recently adopted registration only for federal judgments *inter se*. He refers to the British system as it stands since 1933 (pp. 519, 535 and 590-594). But even in Great Britain wide areas are still covered by the old law only.

The volume should be invaluable for a student of comparative legal history. In the discussion, for example, on the medieval history of International Procedural Law (pp. 61-67) the author supplies a fascinating description of the continental *Fremdenarrest* (which might be translated as attachment of a foreign defendant) and of the *Sacharrest* (attachment of chattels), both being methods to put him before the court. This was the origin of the *forum arresti* in Europe including Great Britain. Where the foreigner was not present within the urban area [—the methods developed first in the municipal courts

(*Stadtgerichten*) —], the attachment of personal property created simultaneously the basis for jurisdiction in those courts.

Professor Riezler—alas—does not tell the whole story, he overlooks the English part. It may be, therefore, permissible for this reviewer to submit a few supplementary lines. Heretofore, it was believed that foreign attachment originated in the "custom of London," as one may see from the outline in *Ownbey v. Morgan*, 256 U. S. 94 (1921). But is this true? First, as a privilege granted to several cities in medieval times, and, later, at the beginning of the Sixteenth Century incorporated in the Coutume of Paris ("Custom of Paris"), Article 173, a right arose for a citizen of the city who had lived there for more than one year and one day to attach whatever was owned by a non-resident debtor of his and was held within the city (p. 73). This was called the *saisie forcaine* (foreign attachment).

The history of foreign attachment seems to originate in the endeavor to facilitate the satisfaction of the creditor's claim, an endeavor which probably first in Italy and France, and later in England had struck roots. This reviewer hopes in a not too remote future to complete a more detailed examination of this subject.

There are a great many other problems presented in the volume which go to the very essence of Conflict of Laws. Only one can be mentioned in passing. In the middle of the Thirteenth Century the *glossatores* arrived at the distinction between the *lex fori* as the law controlling *ordinatoria* and the *lex causae* as governing the *decisoria litis*. The former goes to questions of procedure, the latter to the choice-of-law problems. (See pp. 65 66).

This is a voluminous, but a great book. It forms a worthy counterpart of Ernst Rabel's great comparative work on Conflict of Laws. Both monographs are, so far, the most important book contributions to comparative law in the fields of Private International Law. Dr. Riezler supplies a monumental text of the procedural and jurisdictional problems while Dr. Rabel, fully investigates the choice-of-law part of conflict situations. There is no duplication. I emphatically suggest the translation of Riezler's volume into English.

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ST. THOMAS AND THE WORLD STATE. By Dr. Robert M. Hutchins. Milwaukee: The Marquette University Press. 1949. Pp. 53. \$1.50.

In the spring of 1949, Robert M. Hutchins was invited to deliver the Fourteenth Aquinas Lecture under the auspices of the Aristotelian Society of Marquette University. With his customary informed urbanity, Dr. Hutchins merely varied a theme which he had been presenting for many years: the