

PREFACE

At first I hesitated when Heike Fenton, President of Transnational Publishers, asked me to put together an anthology of my writings. Why waste time on past endeavors, which, in any event, are already in print? As Brainerd Currie wrote in the Foreword to his *Selected Essays*, "One who offers in book form a collection of materials already published in periodicals has some explaining to do." But, he added, "Surely the burden of explanation is diminished when the subject is the conflict of laws."¹ On reflection, I decided to accept Heike's flattering and tempting offer. A collection of this kind has the distinct virtue of making more readily accessible the gist of what I have had to say by putting it between two covers, rather than leaving it dispersed throughout a variety of books and journals, not all of which were published in the United States or are necessarily found in American libraries. Moreover, by reprinting some of my earlier work, I can hope to smuggle parts of it into the new century. One certainly cannot help but wonder whether—at least as the years advance—people will still care to read legal prose published during an earlier millenium.

The format is hardly unusual. In the twentieth century, conflicts anthologies became a favored vehicle of expression for conflicts teachers. As Currie suggests, this is not accidental; rather, "[u]nder analysis, the subject tends to come apart, and systematic, comprehensive treatment recedes as a practical possibility."² Walter Wheeler Cook³ and Ernest G. Lorenzen,⁴ whose anthologies he mentions, have since been joined by David F. Cavers,⁵ Moffat Hancock⁶ and Kurt H. Nadelmann.⁷ In fact, the single most influential American book on the

¹ SELECTED ESSAYS ON THE CONFLICT OF LAWS vii (1963).

² *Id.*

³ THE LOGICAL AND BASES OF CONFLICT OF LAWS (1947).

⁴ SELECTED ARTICLES ON THE CONFLICT OF LAWS (1947).

⁵ THE CHOICE OF LAW; SELECTED ESSAYS, 1933–83 (1985).

⁶ STUDIES IN MODERN CHOICE-OF-LAW (1984).

⁷ CONFLICT OF LAWS: INTERNATIONAL AND INTERSTATE (Davis F. Cavers, Arthur T. von Mehren & Donald T. Trautman eds., 1972).

conflict of laws published during the twentieth century was not Joseph Beale's three-volume treatise or Ernst Rabel's monumental four-volume comparative study, but Currie's collection of the articles he had published in the late fifties and early sixties.⁸ To this day, Currie's "governmental interest analysis," which was set forth in these articles, still represents this country's conventional wisdom about choice of law.

It seems fitting to use the same format for my views on the subject. If there is any pervasive theme to my work, it is the effort to break the stranglehold of interest analysis and the hope that American conflicts law will ultimately distance itself from this unhelpful doctrine. Currie's approach is sadly at odds with the openness to foreign sources and ideas that used to characterize American conflicts law. To escape the stagnation that currently prevails we need to return to the urbane and cosmopolitan attitude that has informed the subject ever since Story wrote his path-breaking treatise. At a time when the cliché "globalization" is in everyone's mouth, it seems perverse to lavish attention on purely domestic problems and to ground our discipline on outdated notions about state sovereignty. In view of the ever-increasing interdependence of nations we simply cannot afford to disregard what happens outside the United States. Moreover, the unprecedented mobility of persons, things, and transactions engenders innumerable international conflicts problems that cannot be satisfactorily resolved if we eschew the comparative method.

In preparing an anthology, one is forced to reread one's work, and that presents the temptation to augment and improve it with the wisdom of hindsight, or at least to append some explanatory notes. I have resisted that temptation; *res ipsa loquitur*. Of course, my earlier contributions have not remained entirely unedited. Obvious mistakes as the misspellings one discovers (if one discovers them; I do not claim to have found them all) do invite correction. For the reader's benefit, and for the sake of a certain measure of uniformity, I have, to some degree, Americanized citations in articles published in foreign journals. But I have not felt impelled to make concessions to the whims and fads of successive crops of Blue Book editors who, attuned to our fast moving times, have never been content to leave well enough alone. Nor have I even tried to strive for complete consistency in citations. With one piece—"A Page of History," taken from my book *Choice of Law and Multistate Justice*—it proved necessary to renumber the footnotes. Whatever other discrepancies a discerning reader may spot are not by design.

Unlike Currie's *Selected Essays*, mine do not appear in chronological order, and they include not only choice of law but also jurisdiction, judgments recognition, and articles dealing with international conventions. The current preoccupation with sovereignty and legal pos-

⁸ *Supra* note 1.

itivism has endangered the well-being of all of these aspects of our discipline. While choice of law lies in shambles because of doctrinal aberrations, jurisdiction has fallen victim to the Supreme Court's attempts to deduce from the Fourteenth Amendment's Due Process Clause rules and principles that no one put there. Currently, the Court's jurisprudence is hampering the negotiations concerning a Hague Judgments Convention. Our domestic law on judgments recognition, however, is in reasonably good shape: the states have largely disavowed the requirement of reciprocity that the Supreme Court attempted to foist upon this subdivision of conflicts law. This state of affairs is due to the common sense of state supreme court judges and to the valiant efforts of the late Kurt Nadelmann, a consummate comparativist who successfully advocated the Uniform Foreign Money Judgments Recognition Act.⁹ But even this subdivision of the conflict of laws is in danger of falling prey to attacks by those who are more impressed with sovereignty than with justice, especially after the difficulties our delegates encountered in The Hague.

Of course, the conflict of laws has been peculiarly susceptible to such afflictions. Regarded as an arcane science far removed from real-world concerns, and characterized by an esoteric vocabulary, it inevitably attracts speculative minds whose forte is not necessarily common sense. Undeniably, it is a fascinating field of law. Although the readers of my *Selected Essays* may not have as much fun as I had in re-reading what I had written, some of it decades earlier, I do hope that they will share with me the sense of wonder that inspired me to make the subject my life's work. If I should be unable to persuade anyone of the merits of my arguments, I may at least succeed in prompting some of my colleagues to honor my work by taking issue with me. If I am able to inspire others to develop their own thoughts about this field, which used to be the province of great legal thinkers before it deteriorated at the very time when the world is most in need of it, my efforts will not have been entirely in vain.

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⁹ See NADELMANN, *supra* note 7, at xxii.