documentation of an established proposition.[15] Its inadequacies as a guide to the future of the Court must be ascribed to the inappropriateness of its method for dealing with the predicament so brilliantly sketched in its final chapter, "The Plight of a Liberal Court." Mr. Pritchett points to three prime factors in the Court's predicament: the habit that has grown on American liberalism since the first World War, of living off its capital of political ideas; the paradox in a double tradition of Holmesian self-restraint and Brandeis judicial statesmanship; and the fact of being in power. He finds that the downfall of conceptualism has not made life easier for the Justices, and that current economic and political problems have outgrown the New Deal framework for their solution. But in his final formulation he seems to accept the old dichotomy of activism versus self-restraint, although rejecting Schlesinger's pat characterizations of the Justices.[16] The members of any group that does not always occupy the entire field of its potential authority may be arranged on a scale of relative willingness or hesitation to participate in the process of decision. They may further be characterized in terms of the values, expressed or inarticulate, that have most frequently led them to participate. But the job for students examining the work of the Court, in its present plight, is to ask the questions which the Justices are just beginning to ask, in order to establish new values and standards by which measurement can be more meaningful. In the meanwhile, "The Roosevelt Court" remains a careful and considered documentation of the Court's stand on yesterday's issues in the problems of today.

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The Conflict of Laws: A Comparative Study, Vol. II. By Ernst Rabel. Ann Arbor: University of Michigan Press, 1947. Pp. xli, 705. $8.00.

This is the second volume of a prodigious enterprise which was undertaken some years ago by a leading European scholar, teacher, and judge. The objective is to present not merely a panoramic outline of the general theses of Conflict of Laws as entertained by legal writers in the leading nations of the world, but, more important, to afford the legal profession of this and other countries a comparative study of conflict of laws in action in jurisdictions whose legal systems have their roots in Anglo-American and Roman traditions. The first volume published in 1945 dealt primarily with such family legal relations as arise out of marriage, divorce, and affiliation. This, the second volume, is devoted to Foreign Corporations, Torts, and Contracts.

Expanding international business activity may on occasion bring to the office of even a provincial lawyer a problem arising out of facts which cross territorial and so legal boundaries. One objective that might have been served by an undertaking such as that of Dr. Rabel would have been to furnish the novice as well as the expert, whatever his own country might be, a working tool through which he could ascertain probable re-

[15] See Powell, The Logic and Rhetoric of Constitutional Law, 15 J. Phil. Psych. and Sci. Method 645 (1918); Braden, The Search for Objectivity in Constitutional Law, 57 Yale L.J. 571 (1948).

[16] Schlesinger, The Supreme Court: 1947, 35 Fortune 73 (January, 1947).

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actions by courts at home or abroad to problems of conflicts of law. Delicts occurring in foreign countries, unless in Mexico or Canada, are not likely to come to the attention of the ordinary American lawyer, but the same cannot necessarily be said for corporate activities and other business transactions. It is believed, however, that the frequently dogmatic style of Dr. Rabel may, insofar as the practitioner is concerned, detract from the usefulness of his work in these last two fields to any but the expert.

However, Dr. Rabel's work should definitely be of particular interest to judges and specialists. Conflict of Laws is not a phase of our Anglo-American legal system that has its roots in the year books. When Story wrote his treatise he drew broadly from the commentaries of continentals simply because the decided cases were comparatively few and text material in English practically nil. The concepts and theories of Dutch and French writers were his points of departure. However, with growth in ease of interstate movement and communication and so of the number of cases involving problems of conflict of laws, the American law turned within itself for its own solutions. In some fields, such as testate and intestate succession to both movables and immovables, a high degree of uniformity was reached by American courts. In other fields, particularly contracts and corporate activities, two of the subjects discussed in Dr. Rabel's second volume, the decisions have been and are not only conflicting but confused. The Restatement might have constituted a guide along a more orderly path. Unfortunately, it was built upon an a priori thesis of territoriality of law with each territorial unit assigned power, according to circumstances, to create rights susceptible of enforcement abroad. Logic starting from a hypothesis, entertained by relatively few, rather than from experience is its insecure foundation.

It is believed that the only basic factor that can lead to satisfactory solution of problems of conflict of laws is expediency. "How does the proposed rule work?" and not "Is it logical according to some preconceived hypothesis?" should be the question uppermost in the mind of judge or codifier. By bringing local and foreign theories of conflict of laws to the attention of the legal professions of the various countries whose legal systems are of European origin, Dr. Rabel has made it possible for judge or legislator to broaden his horizon and so, though vicariously, to supplement his local experience.

Dr. Rabel's views as to the proper approach for the solution of contract problems will undoubtedly be subjected to severe criticism. He rejects the thesis that the validity of a contract should be determined by reference to the law of the place where "the contract is made," thus repudiating the Restatement. He runs counter to a large segment of American thought by advocating "party autonomy," i.e., permitting the parties to stipulate the law to govern their agreements. Where there is no stipulation he, seemingly, would refer all contract questions, such as making, effect, and performance, to the law of the place where the "contract is centered." His suggestion in this respect is undoubtedly worthy of consideration. Whether it would be workable in the United States with respect to interstate transactions may be questionable.

The discussion of the American cases dealing with torts is particularly good. Therein are raised penetrating questions with respect to reference to the law of the place of the conduct versus reference to the law of the place of the effect of the defendant's conduct, which latter happens to be the prevailing American practice. Dr. Rabel also raises questions as to the desirability of always giving blind effect to the law of the place of the injury. For example, where the matter in controversy involves family re-

sponsibility such as that of the husband for the torts of his wife or that of the father for the torts of his minor children, he would permit reference to the law which normally governs family relations.

The chapters on corporations may seem the least satisfactory to American lawyers. Here one gets the impression that Dr. Rabel has not understood too well the struggle of western and southern states against business control by eastern incorporated companies—which owe their fictitious life to local policies making incorporation facile for those who do not intend to do business in the incorporating state.

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