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VALIDITY OF FOREIGN DIVORCES, by  
Hamilton Vreeland, Jr. Callaghan and Co., Chicago,  
1938. Pp. liv, 355. \$6.00.

George Wilfred Stumberg

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is any decency or principle in either group, and has left the American advocates of totalitarian tyranny out on a limb.

With such rubbish Pound has no sympathy. He says: "A psychological realism is abroad which regards reason as affording no more than a cover of illusion for processes judicial and administrative which are fundamentally and necessarily irrational."<sup>1</sup> He points out the impossibility of reconciling the decision in *Commonwealth v. Hunt*,<sup>2</sup> which held lawful a strike for a closed shop, with the theory that Shaw and his associates were simply the mouthpieces of the Federalist-Whig commercial aristocracy from which they came and with which they associated. It is difficult today to realize what a radical and unpopular decision that was in the public opinion of 1842. The "realist" explanation that Shaw was playing the demagogue is beneath contempt. As Pound says: "It seems to be impossible for a Marxian economic determinist to comprehend an honest man."<sup>3</sup>

The book closes with a tribute to those great doctrinal writers like Kent and Story, and to Pothier and other civil law jurists from whom they derived much of their inspiration. The author points out that the need for such writings is as great now as it was then, but for a different reason. Then the courts had to decide new questions without adequate materials; now a vast and chaotic mass of materials requires painstaking search after principles for which the courts have little time. Fortunately Wigmore, Williston, Beale and others—to say nothing of the authors of the American Law Institute Restatement—are the full equals of the great writers of the era of which our author writes.

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VALIDITY OF FOREIGN DIVORCES, by Hamilton Vreeland, Jr. Callaghan and Co., Chicago, 1938. Pp. liv, 355. \$6.00.

Professor Vreeland's monograph on the "Validity of Foreign Divorces" consists of a comprehensive study of the Continental and Anglo-American legal reactions to the matter of the recognition which is to be given at the forum to a divorce decree obtained in another state or country. The book is divided into six parts, the first three of which are devoted successively to the

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1. P. 27.

2. 45 Mass. 111 (1842).

3. P. 88.

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English decisions, to the decisions of the Supreme Court of the United States under the full faith and credit clause of the Federal Constitution and to the cases decided in each of the states of the United States and of the District of Columbia. The fourth part deals with the system of jurisdiction and recognition provided for by a Hague Convention of 1902, and by other treaties, to none of which, of course, is the United States a party. The fifth part is a summary of the "European Law aside from Treaty." In the sixth part the author gives his own conclusions as to the methods which might be employed in bringing about greater uniformity in recognition.

The portions of the text which deal with English and American law should naturally be of greater practical interest to American lawyers than those discussing continental reactions; but the summaries of the law in different European countries do serve as a partial basis for a comparative study. One wonders, however, whether these summaries, as brief as Mr. Vreeland's must be, adequately picture the points of view which exist in the different continental countries. Whatever problems may be involved in the recognition of foreign decrees by continental courts, the social significance of the foreign divorce is not the same in Europe as that involved in recognition by American courts of divorce decrees entered in sister states. The migratory divorce does not have the vogue there which it has with us, largely because continentals do not migrate from one country to another with the same facility as Americans have in moving from one state to another. Furthermore, continental courts are prone to take a strict view in recognizing foreign divorces of their own nationals, sometimes refusing recognition under any circumstances; sometimes refusing recognition unless the grounds were such as are regarded as valid at the forum.

Mr. Vreeland suggests that international and interstate uniformity could be brought about through resort to treaties in which he would make domicil of both parties, or domicil of the plaintiff plus service on the defendant or the last common domicil of the parties, where there has been desertion, the basis for jurisdiction to grant a divorce entitled to full faith and credit. Theoretically this might be done, but practically it seems impossible. The failure to obtain widespread adoption of the Hague Convention of 1902 indicates a reluctance on the part of the more important nations to resort to treaty in a matter of this kind. Furthermore, in the United States divorce as such is not regarded

as involving national policy, to say nothing of international policy. Resort to the treaty making power to cure (if one does exist on a large scale) an internal evil arising out of our American system of a union of states seems but a poor subterfuge to deal with a matter which could, it is believed, be more adequately dealt with through the available devices for internal control.

Under the Supreme Court decisions full faith and credit must be given a foreign decree when it has been rendered in a state which was at the time of its rendition the domicil of one of the parties, provided service was had upon or appearance was made by the other party. In addition, full faith and credit must be given decrees granted in a state which was the domicil of both parties or which was the matrimonial domicil. If the Supreme Court were to hold that the foregoing rules also apply as requirements for jurisdiction to grant a divorce for purposes of due process, there would no longer be any problem as between the states because then divorces granted *ex parte* at the domicil of one of the spouses would be void there and everywhere else. The Supreme Court could also bring about universal American recognition of foreign state divorces by extending the present rules of full faith and credit so as to include within the scope of compulsory recognition divorces granted *ex parte* at the domicil of one of the spouses. Most state courts now recognize such divorces voluntarily and the Restatement of Conflict of Laws in effect provides for full faith and credit to divorces granted at the domicil of the party not at fault.

It is believed, however, that there is a tendency to exaggerate the need for more stringent rules as to compulsory non-recognition or, on the other hand, as to more extensive required recognition of sister state divorces. The courts of states where the grounds for divorce are liberal, for the most part, recognize the validity at the forum of divorces granted *ex parte* at the domicil of one of the spouses. In states where the grounds are limited, as in New York, the courts refuse full faith and credit except where recognition must be given under the decisions of the Supreme Court. But even in New York the position has been taken that its rule of non-recognition does not apply where the defendant was not a resident of New York at the time the decree was granted and the divorce is one which is acceptable to the courts of the matrimonial domicil. A widespread adoption of the New York rule, by which the matter of validity at the forum of a foreign divorce *ex parte* is referred to the matrimonial domicil,

would mean that most divorces granted at a *bona fide* domicil would be valid everywhere because, as already stated, most courts have a liberal recognition policy. The exceptional situations where a divorce although possibly valid where granted would not be valid elsewhere would comprise those involving *ex parte* divorces against non-resident defendants who at the time of the decree were domiciled in a state which is also the matrimonial domicil and which has a strict view as to recognition. Such divorces would be invalid everywhere except, perhaps, where granted.

The matter of recognition of foreign divorces involves a good deal of local state policy which has behind it the local attitude toward divorce. If the courts in states like New York were required to give full faith and credit to all divorces granted *ex parte*, the local divorce policy could be evaded through a change of domicil by one of the spouses. On the other hand no particular harm can be done by permitting states having a liberal divorce policy to recognize foreign divorces *ex parte* if they so desire. When divorce is easily granted it makes but little difference where it is granted.

The most deep rooted social evil in our interstate divorce situation is believed to lie in the fact that in several states divorces are habitually granted without either party being actually domiciled there. The defendant acquiesces in the suit for divorce, makes no defense on jurisdictional grounds, and both parties assume that the judicial decree is a valid one, when in fact, aside from the possible inability of either the plaintiff or the defendant to question it because of estoppel, it is void because none of the recognized jurisdictional standards have been complied with. The only way in which the evils of the divorce which is void because of lack of any basis for jurisdiction can be corrected is by bringing home to the spouses the fact that the decree may at some time or other lead to complications at the instance of some person not a party to the divorce proceedings. The problem here is not a legal but an educational one.

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