HESSEL E. YNTEMA
1891-1966

The Editorial Board of the Journal wishes to express its grateful thanks to Rabels Zeitschrift für ausländisches und internationales Privatrecht and to Professor Konrad Zweigert for the kind permission to translate and reproduce this article.

Hessel Edward Yntema passed away on February 21, 1966, at the age of 75. The United States is not the only country that bears the loss of this genuinely versatile and truly international jurist.

The lively combination of the Old and the New Continent that distinguished Yntema above all as a man and as a jurist stemmed from his origins and his environment. He was proud to be the descendant of a very old family of West Friesland and of its first member who came to the United States in the middle of the nineteenth century. The history and the legal system of the country of his ancestors held a great fascination for Yntema, from the time he first visited the Low Countries as a young man of 20. And it was to The Netherlands that he always returned. Above all he showed his love for that country through his research into that particular epoch in the history of private international law that was named after the Dutch—an indiscriminating designation as he insisted, because alongside the Dutch school there stood the Frisian School in the person of Ulrich Huber. The last and truly most moving evidence of his “return home” is his work on the origins of the comity doctrine,² a study that evinces his intimate knowledge of the original sources.

Yntema’s life was as colorful as the multiplicity of his interests. After attending various universities in his home state of Michigan he went to Oxford as a Rhodes scholar. In 1919 he obtained a doctorate in philosophy, and two years later a doctorate of law at Harvard. In the same year, after a brief interlude in political science, he began to teach law as a lecturer in Roman law and comparative law at Columbia University. At that time he was greatly attracted by the “realist school.” For this reason he accepted an invitation from Johns Hopkins University, that unique and regrettably shortlived hotbed of studies in legal sociology in the United States. Here he engaged primarily in factual research concerning the administration of justice, with particular emphasis on the administration of courts and

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the judicial process. His findings culminated in proposals for concrete reform. From 1934 on he taught practically without interruption at the University of Michigan Law School. His status of professor emeritus that began in 1961 meant no cessation of his life of scholarship and research; the end came only through death.⁸

We can think of no formula that would be sufficiently inclusive to comprehend the wealth of this world-embracing intellect. What attracts us most in his œuvre is the triangle of legal comparison, legal unification, and private international law.

Comparative law for Yntema was not merely another course in the law school curriculum designed only to impart knowledge about foreign law, as other courses impart knowledge about the law of contracts or criminal law. To him the subject should engender a ferment that would humanize the provincial tradition of legal education so rigidified in its devotion to positivist case law. Legal comparison, in his view, should impart to legal studies the character of scholarly efforts and should imbue them with an awareness of space and time, with ideas and facts. This was in essence the meaning of his unforgettable parable of Plato’s man in the cave.⁹

On the other hand, Yntema made effective efforts toward practical application of legal comparison and legal unification. For the last twenty-five years of his life he directed comparative research on the inter-American laws of negotiable instruments; according to recent information the results of this research will appear posthumously in the near future, in a volume entitled, An Analytical Concordance of the Laws of Negotiable Instruments in the Americas. This work will perhaps, as a result of all the efforts in achieving it, make possible the attainment of the precise aim Yntema had in mind, a uniform international law of negotiable instruments that would bridge the gap between the Anglo-American and Continental legal systems.

Similarly, Yntema could not treat the third instrument that serves to harmonize the various legal orders, private international law, other than on a worldwide scale. Early in the 1920’s he called for the comparative treatment of this branch of law, including particularly the solutions embodied in continental European law. In his article on party autonomy he later provided us with the leading guide for using this method.¹⁰ He was very skeptical about the Beale-inspired Restatement (First) of the Conflict of Laws because he was unable to agree with its basic principles. Similarly, his fundamental views led him to refuse the latest American theories set forth by Currie and

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¹⁰ "Autonomy" in Choice of Law, 1 Am. J. Comp. L. 341 (1952).
Ehrenzweig. However, time ran out for him so that he could not write his planned *Philippica* against this new trend of thought. In his later years he became more and more attracted to the history of private international law; his contributions to the *Festschriften* for Rabel and Dölle are the finest fruits of his efforts in this field.

Next to the triad of legal comparison, legal unification, and private international law, Yntema was especially interested in European legal history and the general theory of law. He held Roman law in high esteem, not merely as a basis for legal comparison but also as a fundamental element of Western civilization. In the methodological controversies of the early thirties he joined the camp of the legal realists. However, he did not agree with the disinterest in history and prepossession with national law manifested by most of the adherents to this school, nor did he accept all of its theoretical presuppositions. The high degree to which history and comparison welded his thoughts on justice into an indivisible unity is evident in his series of lectures on *The Crossroads of Justice*.

What in effect attracted Yntema to this variegated selection of topics? Apparently a deep dissatisfaction with existing positive laws as compartmentalized within narrow nationalistic limits, and the desire to liberate thinking about what is right from all existing prejudice, and to achieve a truly scientific method to understand and explain it. No wonder that such wide perspectives, such far-reaching assumptions were not comprehensible, were even frightening, to many of his colleagues. Nevertheless, Yntema had the satisfaction of seeing some of his demands met, especially as a consequence of a stronger emphasis on comparative law, not only in his own university but in most of the universities in the United States.

Yntema never shied away from personal engagement in carrying out his plans. For this he was endowed with exceptional talents for organization. Thus he directed the compilation of the *Code of Federal Regulations*, thereby bringing into being what is still a unique instrument for finding the rules in the entire body of secondary federal norms. His organizational efforts in the field of comparative law began during the Second World War. At that time he headed a vast program of comparative studies in the various Latin-American laws, a program that over the years brought many jurists from Latin-America to Ann Arbor. Soon after the end of the war he participated in the short-lived efforts of the Rome Institute to create a uniform inter-

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6 *Academia Interamericana de Derecho Comparado e Internacional, 6 Cursos Monográficos* 103 (1957).

7 A bibliography of his writings is published in the Appendix to his *Festschrift, XXTH CENTURY COMPARATIVE AND CONFLICTS LAW* 535–44 (1961), brought up-to-date, this *Journal, infra* p. 417.
national law of bills of exchange. His main efforts, however, were
directed towards bringing together the scattered and not altogether
co-operative forces of the American comparatists.

As Editor-in-Chief of The American Journal of Comparative Law,
organized in 1952 as a co-operative effort of the leading law schools
in the United States, he merited the signal honor of having raised
this periodical in a short time to a leading instrument for comparative
research, not merely the voice of America, but also the voice of the
world in America. Himself a brilliant stylist, he unselfishly devoted
his energies to the self-denying task demanded of him as editor. How-
ever, even beyond his work on the Journal, Yntema time and again
gave assistance to the development of important works. For instance,
it was because of his initiative and his continual supervision that we
have the work of Gsovski on Soviet Civil Law, in its time a work of
great repute, and above all, the four volumes of Rabel's comparative
treatise on the Conflict of Laws.

Well-deserved honors came to him in due course. The commissions
and associations to which he belonged as member, honorary member,
vice president, and president cannot be listed here. Suffice it to mention
that he was the Honorary President of the International Association of
Legal Science, co-editor of The International Encyclopedia of Com-
parative Law, and Honorary Member of the German Gesellschaft für
Rechtsvergleichung. The Festschrift dedicated to him on his seventieth
birthday was correct in associating him with the comparative law
and private international law of the twentieth century. Yntema was
one of the leading thinkers in these fields.

Let us not forget the man in praising his work. We see his tall,
lanky figure, his impressive features and his eyes full of humor; we
remember the devilish pleasure he revealed at times by feigning total
ignorance, thus misleading newcomers for a short while about the
true depths of his learning and knowledge.

He was in every respect a superior intellect, a powerful will, a re-
markable man with the toughness of peasant stock, one of a kind
not easily to be found. We bow to one of the great figures of our calling.

KONRAD ZWEIGERT