

January 1937

Review of “Conflict of Criminal Laws,” By Edward Stimson

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Recommended Citation

Ralph F. Fuchs, *Review of “Conflict of Criminal Laws,” By Edward Stimson*, 22 WASH. U. L. Q. 296 (1937).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol22/iss2/5

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Not the least interesting feature of these letters is the manner in which they originated. It was somewhat unusual for Justice Holmes, then in his eighties, to begin a correspondence with Dr. Wu, a young Chinese law student in his early twenties, and continue this correspondence for eleven years.

These letters reveal that in spite of his advancing age and time-consuming duties Justice Holmes found time to read widely both within and without the field of law. It is interesting to note, however, that he did not put great store by the older books or the classics, and rather felt that there was more profundity in modern books. At times he gave very sage advice to his long-distance protégé. He expressed his distrust in theory not grounded in the hard facts of life, and cared little for the formal systems of Philosophy, including Kant and Hegel. Thus, he says, "The practical is disagreeable, a mean and stony soil, but from that it is that all valuable theory comes. That is why I thought Ehrlich's *Grundlegung der Soziologie des Rechts* worth a garretful of philosophers from Hegel down."³ A bit of recurring advice to Dr. Wu was that one is so likely to dodge the details and drudgery of the every-day job and seek to generalize and spin theory, with which Justice Holmes found no sympathy.

The frequent expressions of affection and concern for the safety of Dr. Wu living in a disordered China, and the confidences Justice Holmes shares with him concerning his feelings towards his advancing years and his near retirement from the Bench, are most intimate and touching. To hear Justice Holmes say that a man may be young till 60, not old till 80, and express fear of his age because he could no longer take stairs two at a time, enables one to understand how this great figure kept a youthful vigor and outlook to the end. Quite interesting, too, is the fact that, while regarding the matter as trivial, he took some pride in being older than Taney at his death and in being the oldest judge who had sat on the Bench.

Every follower of Justice Holmes will get great satisfaction from reading this splendidly edited collection of Miscellanea, which equally reveal his great mental powers and his human qualities.

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J. A. MCCLAIN, JR.†

CONFLICT OF CRIMINAL LAWS. By Edward S. Stimson. Chicago: The Foundation Press, Inc., 1936. Pp. xi, 219.

Professor Stimson, as he states in the preface to this most recent of his works in the field of Conflict of Laws, had two purposes in mind in writing the present monograph. These were, "ascertaining and recommending general principles to be applied" in solving the problems that arise, and "to accurately state the law and to collect and cite all of the Anglo-American authorities it was possible to find." In other words, the book is intended both as a critical work and as a handbook for the practitioner and student.

3. P. 184.

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The author has succeeded in combining his two purposes without loss to either. His analysis is logical, his judgments are clearly expressed, and the citations and holdings of the courts are set forth fairly and understandably.¹ Since the authorities relating to the subject in hand are thus made illuminatingly available, there can be no question regarding the author's contribution to research libraries. It will have an honorable place among those newer law books which set forth the results of painstaking scholarship with originality and efficiency.

Appraisal of Professor Stimson's critical judgments must turn upon the acceptance or non-acceptance of the basic proposition, announced in the preface and applied consistently throughout the book, that "the sound view is that the law which governs is the law of the state in which the accused was at the time of his [criminal] conduct," rather than the law of some other state in which its effects may be felt. It is argued by the author that individuals are entitled to be subject to only one body of law at a time and to know what that law is. Since "the state in which the actor was located has actual physical power over him" and therefore has "jurisdiction,"² and since an individual usually knows where he is, it is the state where the alleged offender was when he committed an allegedly criminal act whose law should be applied in trying him. The state where the harm was produced by his act, if later he comes within the custody of its officers, may, indeed, try him if it wishes, for it has "jurisdiction" by reason of the custody;³ but it should apply the law of the other state. Unfortunately the well-established rule⁴ is that it will try him for violation of its own laws or none at all, for "the courts of one state will refuse to try persons charged with violating the criminal laws of another state."⁵ This rule, Professor Stimson thinks, might well be changed,⁶ if constitutional obstacles⁷ can be overcome.

The bulk of Professor Stimson's book is taken up by careful analysis and criticism of the Conflicts decisions in regard to specific crimes, in regard to crimes on water, and in regard to forfeiture of property. In the latter connection as well as in the others, Professor Stimson insists that the law of the place where the owner of the property is at the time of its seizure should be applied.

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1. Thus on p. 10 it is stated that "The great weight of authority is that the illegality of removal [from another jurisdiction] does not entitle the prisoner to be released or returned." The cases are cited in a footnote. The author then proceeds to attack the reasoning of the decisions and to argue that the authorities should be to the opposite effect.

2. P. 48.

3. P. 24.

4. P. 26.

5. P. 24.

6. P. 25.

7. P. 27.

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