

KORTE ARTIKELEN—NOTES

IN MEMORIAM HESSEL E. YNTEMA (1891-1966)

It seems appropriate in this review to commemorate the American lawyer Hessel Edward Yntema, who died on February 21st, 1966, and was interred in Holland, Mich.

He was a champion of comparative law and a conscientious scholar of conflicts of law. As a speaker and publicist in these fields, he was well known to a large circle of lawyers in his home country as well as in Western Europe including the Netherlands. We were all impressed by his personality.

Yntema was born on January 17th, 1891 at St. Johns, Mich. He earned degrees at Hope College, Mich., at the University of Michigan, at Oxford and at Harvard Law School. He started out on his career as an Instructor in Political Science at Michigan. In 1921, he began teaching Roman Law and Comparative Jurisprudence at Columbia University as a Lecturer, being appointed full Professor of Law at Columbia in 1928. In the same year, he was awarded a professorship at John Hopkins University, being mainly engaged in factual research on legal processes and the administration of justice. In 1933, he was called back to the University of Michigan at Ann Arbor, as a Professor of Law, where he terminated his academic career as a Research Professor of Comparative Law in 1960. During one year (1947-1948), he served Yale University together with Michigan.

From 1934 onwards, he was in public service, as a consultant to the Treasury Department, the Department of Justice and the State Department respectively. In 1952, he acted in Geneva as a vice-president of the U.N. Committee of Experts on Recognition and Enforcement of Maintenance Orders. The Netherlands Professor E. M. Meijers presided over that Committee. Two methods of proceedings were elaborated, each corresponding to a different draft. It followed that in 1956 two separate conventions were adopted, viz. the New York Convention on Recovery of Maintenance and the Hague Convention on Recognition and Enforcement of Maintenance Orders.

In fact, Yntema and Meijers were acquainted, since Meijers was a member of the Governing Council of the Rome Institute for the Unification of Private law until his death in 1954, and Yntema too was a member of this Council from 1952 to 1956. In 1957, in a book review, he devoted much attention to a considerable part of Meijers' legislative and legal work, having already evaluated

Meijers' critical views on the historic bases of private international law in 1953 (*Amer. Journal of Comp. Law* 1953, 297-317).

The Frisian descent of this remarkable and sturdy man has not been left undiscovered. A genealogy was published in 1958 by Mary E. Yntema, entitled "The family of Hessel O. Yntema, Frisian Immigrant to Michigan, 1847" (published by The Klaasen Printing Cy, Mich.).

Grandfather Hessel Ottes Yntema, born at Exmorra (in the Netherlands province of Friesland) on May 4th, 1811 and deceased on March 16th, 1883, at Vriesland, Mich., was descended from a family known from about 1650, some of them bearing the christian name Hessel since as early as 1739. Hessel O. emigrated to the New World in 1847, sailing by the "Albatros" with his wife and seven children "with many others who had suffered religious repression and other hardships in the Netherlands. People were fined for holding church services; taxes were exorbitant and soldiers were given quarters in private homes" (Mary E. Yntema o.c.). Hessel O. settled at Drenthe, Mich. It was not the whole clan that emigrated: at the time of 1947 census, a century later, there were in the Netherlands 349 persons having the same family name.

In the United States, two more children were born; the youngest, Douwe Bouke, born May 31st, 1851, became a Professor of Physics at Hope College, Holland. Hessel Edward was his eldest son. Five other children of Douwe went to university colleges, and three of them were awarded Professorships, though not in schools of law.

Hessel E. Yntema was to be an excellent teacher, particularly in small groups and seminars, and a fervent supervisor in legal research. From 1919 onwards, he published frequently and regularly, on legal science, legal theory and history, and on Roman law, later concentrating on comparative and conflict law. His essays appeared in nearly every *Law Review* and in a number of books. His innumerable book reviews first treated English language publications, later French literature as well. Every important commentary on conflicts law passed his critical eye. A bibliography is to be found in the volume of legal essays dedicated to him on the occasion of his 70th birthday in 1961: "XXth Century Comparative and Conflicts Law", published by Sijthoff, Leiden, publisher of this quarterly. All his writings bore witness to his profound studies, his knowledge of European culture, his didactic gifts and a great idealism.

Yntema was at the same time a reliable and energetic organizer, on behalf of the Inter-American Legal Research project which he started and the Michigan Legal Publications which he edited from 1939 up to 1957, in such circles as the American Association for the Comparative Study of Law, the American Foreign Law Association, the Centro Argentino de Altos Estudios Juridicos, the Gesellschaft für Rechtsvergleichung, the Louisiana State Law

Institute, and in his capacity as a President of the International Faculty of Comparative Law in Luxemburg.

With missionary zeal, he devoted himself to the advancement of international cooperation and of the knowledge of foreign systems of law, always comparing the various theoretical bases and furthering the practical unification of the law.

Many scholars have been given the opportunity to continue their studies at Ann Arbor. Among these Dr. Ernst Rabel was perhaps the most prominent. It was Yntema's efforts which made possible the writing and publication of Rabel's authoritative 4-volume book "The Conflict of Laws, a Comparative Study". Foreword I to Vol. I, 1st ed. (1945), by W. Draper Lewis, Director of the American Law Institute, tells us that, steps having been taken by the Institute to bring Rabel to the U.S., the latter's work "preparatory to the preparation of this treatise" was immediately started, and that in the spring of 1942, the University of Michigan gave him a position, enabling him to complete the first of the volumes contemplated. "His work in Michigan has been done under the most fortunate surroundings, as he had the active advice and assistance from the point of view of a leading American specialist in international law, Professor Hessel E. Yntema" (p. XI). To this is added Foreword II, written by Yntema himself: "the studies reflected in the present volume have been substantially accomplished at Ann Arbor, in large part with the aid of funds and further assistance provided by the University of Michigan." This must have met with some resistance, as is apparent from the words which follow: "This co-operation, illustrating an appropriate function, as once suggested by the writer, for a nondenominational Institute in the world of academic rivalries, deserves a word of commendation" (p. XIV).

Yntema takes a critical attitude towards isolationism in American conflicts of law doctrine, because it gives inadequate attention to the doctrines of foreign countries other than England. He criticizes the Restatement of the law of conflict of laws (1934) in that it restates "the law as it is" and he declares that "the failure in this codification of the Common Law to take account of other systems was not merely an effect of, but has become a cause to perpetuate an inappropriate view of private international law, which no longer befits the United States" (p. XIX). As late as 1959, this same reasoning is to be found in his essay in the *Revue critique de d.i.p.* (p. 1) on "Les objectifs du d.i.p." (cfr. also *Canadian Bar Review* 1957, 721): comparative law and conflicts law coinciding in the comparative method in conflicts law, —on an equal footing with the pragmatic method which requires an examination of all relevant economic and social factors.

Four groups of essays have been collected in the "XXth Century" -volume: those on comparative law, special parts of internal law and national codification, conflict of laws, and public law and

administration. This is the book to which Joseph Dainow of Louisiana Law School contributed a study of "Civil Code Revision in the Netherlands" (p. 172) and I. Kisch of the University of Amsterdam on "Statutory Construction in a new key, Harmonizing Interpretation" (p. 262). A. A. Ehrenzweig, "Characterization in the conflict of laws: An unwelcome addition to American Doctrine" (p. 395) says: "Hessel Yntema has contributed much to the destruction of that false conceptualism which has for several crucial decades threatened the natural growth of American conflicts law", a passage which however by no means signified that Yntema, while fighting against inveterate traditionalism of the judiciary, necessarily supported Ehrenzweig's doctrines on conflicts law.

It strikes us that contributions to this book do not often refer to Yntema's own writings or opinions. It seems sometimes as if his main significance was in documenting, teaching, stimulating, organizing. However, when reading his brilliant treatises on conflicts of law history, we are impressed by his scholarly capacities. In the Netherlands we were touched by his contribution to the "Festschrift für Hans Dölle" (1963), entitled "The Comity Doctrine" (p. 65-86); there Yntema (a Romanist) distinguishes the Voet's and Rodenburg on the one hand and Ulrich Huber on the other: neither the *comitas gentium*, nor the ancient *nobilissima statutorum divisio* suits Huber's view of conflicts law, which is based rather on an obligation *ex jure gentium* to apply foreign law. Yntema rather agrees with Kollewijn's book on the History of p.i.l. doctrines ("Geschiedenis", 1937) which he quotes (p. 132) and he explains the reasons why Huber's Praelectiones appealed in other countries. He might also have mentioned that in 1932 L. J. van Apeldoorn upheld the like interpretation of Huber's doctrine. And Yntema asks himself: "Is it too much to suggest that the Netherlands in the Seventeenth Century produced two doctrines of conflicts law: the *doctrine hollandaise* of comity and the *doctrine frisonne* that in this field *goed recht ende justitie* should prevail?" (p. 184).

Yntema's bibliography shows the efficiency of The American Journal of Comparative Law which he founded in 1952, and which was to be "his" quarterly, bringing together all forces studying comparative law under his direction as Editor-in-Chief. He collected materials and stimulated the contributors, while continuing to publish and translating from the French, German, Italian and Spanish languages. In this Journal Meijers published his short essay on the Benelux Uniform Conflicts Law (1953, p. 1-11). The Journal is well-known the world over.

On his decease, the Memorial Resolution of the Law School Faculty recalled Acting Dean Charles Joiner's description of Yntema as "probably the world's most distinguished comparative scholar. His distinction has circled the globe." This apparently was the impression made on those in his proximity. Yntema him-

self would have been the first to smile. He was a plain and natural man, exceptionally gifted, and a strong character. I met him personally when he was a vice-president of the "Académie internationale de droit comparé" at the Brussels Conference in 1958—which was continually inspired by his personality—and at its Hamburg Conference in 1962. His constancy and his frankness and fairness came once again to the fore when, after the decease of Louis Milliot, a new President was to be elected. Yntema's antecedents made him the natural first candidate. I had the privilege of exchanging many letters with him because the Statute of the Académie, which is an association incorporated in the Netherlands, had not exactly been observed. At a certain moment, preference in favour of an honourable European lawyer had, beyond Yntema's knowledge and contrary to the statute, been communicated to members. Yntema, with impressing integrity, declined the presidency.

To me, Yntema seemed to be typically American, but in some respects he was still a Frisian, if one follows the Netherlands novelist Simon Vestdijk—himself Frisian—who characterizes a Frisian, in spite of his calm and sober appearance, as a sensitive creature with a strong inner life. I wonder whether we would have had him among us, if his grandfather had waited for just one more year before deciding about emigration or if Groen van Prinsterer's protest had met with earlier results.¹

We commemorate our comparative law pioneer with gratitude.

J. OFFERHAUS

Note

This is an allusion to the "Secession" movement, the "Afscheiding", which from 1834 onwards spread throughout the entire Protestant part of the Netherlands. The groups involved pleaded a pure Calvinism, different from the theology of the Netherlands Reformed Church which was subject to rules by Royal Decree. The hardship and "dragnades" were indeed experienced and are not denied by church historians. They were mostly sanctions applied by the State, freedom of religion being denied to churches not recognized by the Crown. Protests from statesman Groen van Prinsterer and others were in vain. After King William I's abdication in 1840 the measures were mitigated, prosecutions in law practically ceased after 1845 and recognition was initiated by the revised constitution of 1848.

In those years, the economic and social situation, especially for the farmers, was bad and this was one of the main reasons for mass emigration to the U.S., particularly from the province of Drenthe. Those who emigrated were guided by the Rev. Albertus van Raalte, who himself left the country in 1846 and founded Holland, Mich. in 1847 and Hope College in 1851. Out of a total of 8052 emigrants between 1831 and 1847 only 653 were seceders. The government later held an inquiry into the reasons for emigration. The majority were people of small means, neither rich nor starving. Religion certainly was not the only motive and we do not exactly know what stirred the Yntema's. The present minister of Exmorra tells me that the churches' registers contain no particulars of them. There is a rich documentation on the Secession in church history commentaries and archives (Cfr. 4-volume "Archiefstukken" by F. L. Bos). I would also mention J. A. Schröder, *Secession and Emigration 1834-1947*, H. J. Prakke, *Drenthe in Michigan, 1948*, and the *Souvenir of the Sixtieth Anniversary of the Colonization of the Hollanders in Western Michigan, 1907*.