

EDITORIAL BOARD OF ADVISORS

YORAM DINSTEIN Tel Aviv, Israel

NORTHCUTT ELY
Washington, D.C.

VICTOR C. FOLSOM

Green Valley, Arizona

MICHAEL W. GORDON Gainesville, Florida

Günther Jaenicke Heidelberg, Germany

Manfred Lachs
The Hague, the Netherlands

HOWARD S. LEVIE

Newport, Rhode Island

RICHARD B. LILLICH Charlottesville, Virginia MYRES S. McDougal New Haven, Connecticut

EDWARD McWHINNEY

Burnaby, British Columbia

Canada

CECIL J. OLMSTEAD

New York, New York

NATALINO RONZITTI
Pisa, Italy

SHABTAI ROSENNE Jerusalem, Israel

DAVID M. SASSOON Washington, D.C.

IVAN SHEARER

Kensington, N.S.W.,

Australia

RICHARD YOUNG Van Hornesville, New York





Cite as: 25 Syracuse J. Int'l L. & Com.

ISSN 0093-0709

The Syracuse Journal of International Law and Commerce is owned, published and printed annually by Syracuse University, Syracuse, New York 13244-1030, U.S.A. The Journal is one of the oldest student-produced International Law journals in the United States, and will celebrate twenty-five years of student-production in the Spring of 1998. Editorial and business offices are located at the Syracuse University College of Law, E.I. White Hall, Suite No. 0041, Syracuse, New York 13244-1030 U.S.A. [telephone: (315) 443-2056].

The Syracuse Journal of International Law and Commerce actively seeks and accepts article submissions from scholars and practitioners in the field of public and private international law. The Journal, from time to time, holds international symposia and publishes the papers presented therein in addition to its annual volume of submissions.

Issue subscription rates, payable in advance, are: United States, \$10.00; foreign \$13.00. Subscriptions are automatically renewed unless a request for discontinuance is received. Back issues may be obtained from Fred B. Rothman & Co., 10368 West Centennial Road, Littleton, Colorado, 80123 U.S.A. Back issue prices are: United States, \$10.00; foreign, \$13.50. All prices are subject to change without notice. POSTMASTER: Send address changes to Syracuse Journal of International Law and Commerce, E.I. White Hall, Suite No. 0041, Syracuse, New York 13244-1030 U.S.A. To ensure prompt delivery, notification should be received one month in advance.

The views expressed are solely those of the authors and do not necessarily reflect the views of the Syracuse Journal of International Law and Commerce, its advisors, editors or staff, Syracuse University College of Law, or Syracuse University.

Member of National Conference of Law Reviews Member of National Conference of International Law Journals

The Syracuse Journal of International Law and Commerce is indexed in the Index of Legal Periodicals, Current Law and Legal Resources Index. Full text of selected articles is available on Westlaw® (database SYRJILC).

Copyright © 1998 Syracuse Journal of International Law and Commerce. All rights reserved.

VOLUME 25

SPRING 1998

ANNIVERSARY

SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE

25TH ANNIVERSARY ISSUE

SYRACUSE UNIVERSITY COLLEGE OF LAW

CONTENTS

DEDICATION

1000	1 2 months 18 5	
ART	ICLES	

American Assistance to Litigation in Foreign and International Tribunals: Section 1782 of Title 28 of the U.S.C. Revisited	
Hans Smit	1
International Legal Careers: Paths and Directions	
James R. Maxeiner	21
Sur la non-codification du droit international privé français	140
Paul Lagarde	45
The European Intergovernmental Conference: An American Perspective	
George A. Bermann	61
The French Référé Procedure and Conflicts of Human Rights	69
Wallace R. Baker & Patrick de Fontbressin	09
The Presidency of the Council of the European Union	
Bernhard Schloh	93

SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE

SYRACUSE UNIVERSITY COLLEGE OF LAW

1997-1998 EDITORIAL BOARD

Editor-in-Chief
David E. Blake-Thomas

Managing Editor David J. Bolduc

Lead Articles Editors
Popi T. Paleoudis
Eric D. Johnson

Survey Editors Kristin M. Dadey Matthew D. Peter Form and Accuracy Editor
Jason C. Baker
James T. Dehn

Notes & Comments Editors
Kelly J. Aran
Jennifer M. Hartman

Business Editor Richard R. Volack

THIRD YEAR ASSOCIATE EDITORS

Maryangela King Mary Mankus

Katsura Kurita

Jeff Linville Jason Sweatt

SECOND YEAR ASSOCIATE EDITORS

Peter Bachmore Amanda Cardenas Paul Deyhle Stacy L. Kinel Kelly Olson Jennifer Skylakos Cecille Dy Balutan Leslie Cataldo Gilberto Garcia Marija Kristich Karen Sepura Karen A. Brenizer Steve Chin Brad Hansen Hee Eun Lee Will Skinner Jason Waters

Faculty Advisor Professor William C. Banks

OFFICERS OF THE UNIVERSITY

Kenneth A. Shaw, Chancellor and President Gershon Vincow, Vice Chancellor for Academic Affairs

COLLEGE OF LAW ADMINISTRATION

Daan Braveman, Dean
Sarah H. Ramsey, Associate Dean for Academic Affairs
Richard P. Ingles, Associate Dean, External Affairs
Cheryl Ficarra, Assistant Dean for Enrollment & Career Services
M. Louise Lantzy, Director, Law Library

FACULTY

Donna E. Arzt, B.A., J.D., LL.M., Associate Professor of Law Robert H.A. Ashford, B.A., J.D., Professor of Law William C. Banks, B.A., M.S.L.S., J.D., Professor of Law Joseph A. Barrette, B.S., J.D., Professor of Law Peter A. Bell, B.A., J.D., Professor of Law Leslie Bender, B.A., J.D., LL.M., Professor of Law Daan Braveman, A.B., J.D., Professorof Law and Dean David A. Brennen, B.A., J.D. LL.M., Assistant Professor of Law Barbara A. Burnett, B.A., J.D., Professor of Law Christian C. Day, A.B., J.D., Professor of Law Lisa Dolak, B.S., J.D., Assistant Professor of Law Samuel J. M. Donnelly, A.B., LL,B., LL,M., Professor of Law David Driesen, B.Mus., M.Mus., J.D., Assistant Professor of Law Richard A. Ellison, B.B.A., LL.B., Professor of Law Martin L. Fried, B.A., LL.B., LL.M., Crandall Melvin Professor of Wills and Trusts Richard I. Goldsmith, A.B., LL.B., Professor of Law Theodore M. Hagelin, B.S., J.D., LL.M., Professor of Law Margaret Harding, B.A., J.D., Assistant Professor Patricia Hassett, B.A., LL.B., LL.M., Professor of Law Peter E. Herzog, B.A., J.D., LL.M., Crandall Melvin Professor of Law Elijah Huling, Jr., B.A., J.D., Visiting Associate Professor of Law Paula C. Johnson, Associate Professor of Law Hilary K. Josephs, A.B., A.M., Ph.D., J.D., Professor of Law Arlene Kanter, B.A., J.D., LL.M., Associate Professor of Law and Director of Clinical Programs Gary T. Kelder, B.A., J.D., LL.M., Professor of Law Deborah Kenn, Associate Professor of Law M. Louise Lantzy, Director, Law Library and Associate Professor Laura G. Lape, A.B., M.A., J.D., Associate Professor of Law Travis H. D. Lewin, B.A., LL.B., S.J.D., Professor of Law Paul Lund, B.S., J.D., LL.M., Associate Professor of Law Robin Paul Malloy, B.S., J.D., LL.M., Professor of Law and Economics Thomas J. Maroney, B.A., LL.B., Professor of Law (Leave 1994-'95)

Robert J. Rabin, B.A., LL.B., LL.M., Professor of Law Sarah H. Ramsey, B.A., M.A., J.D., LL.M., Associate Dean and Professor of Law Wilhelmina M. Reuben-Cooke, B.A., J.D., Professor of Law

Janis McDonald, B.A., J.D., LL.M., Associate Professor of Law

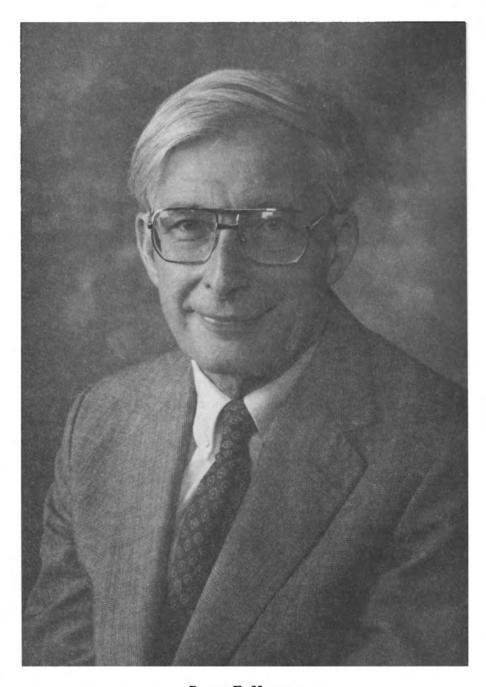
Richard D. Schwartz, B.A., Ph.D., Ernest I. White Professor of Law and Professor of Sociology & Social Sciences

Roderick Surratt, B.A., J.D., Professor of Law Steven Wechsler, B.S., M.B.A., J.D., Professor of Law James K. Weeks, A.B., J.D., LL.M., Professor of Law

William M. Wiecek, B.A., LL.B., Ph.D., Chester Adgate Congdon Professor of Public Law and Legislation and Professor of History

FACULTY EMERITI

 Robert M. Anderson, A.B., J.D., Chester Adgate Congdon Professor of Public Law and Legislation Emeritus
 Samuel M. Fetters, LL.B., LL.M., Crandall Melvin Professor of Estates and Future Interests Emeritus



PETER E. HERZOG

FESTSCHRIFT HONORING PETER E. HERZOG CRANDALL MELVIN PROFESSOR OF LAW

DEDICATION

The Syracuse Journal of International Law and Commerce is greatly honored to dedicate our twenty-fifth issue to Professor Peter E. Herzog. It is with profound admiration and respect that we honor our most senior faculty member here at the College of Law. We can think of no greater way to celebrate the twenty-fifth anniversary of our Journal.

Professor Herzog was born in Vienna, Austria, the son of Paul Herzog, a Vienna attorney. In 1949, Professor Herzog attended his father's alma mater, the University of Vienna, for a one year study of law. He then came to the United States to complete his undergraduate education at Hobart College, graduating *cum laude* in 1952. That same year, Professor Herzog began his formal legal education at Syracuse University College of Law. Three years later, he graduated *summa cum laude* with an LL.B.(J.D.) After a stellar career as a law student at Syracuse, Professor Herzog attended Columbia University where, in 1956, he received his masters of law, specializing in Conflicts of Law and Comparative Law.

In 1957, after gaining admission to the Bar of the State of New York, Professor Herzog began his legal career as a Deputy Assistant Attorney General. One year later he became an Assistant Attorney General for the New York State Department of Law. His work primarily involved claims by and against the State and reviews of administrative actions. He argued a number of appeals in the Appellate Division, and one before the Court of Appeals.

In 1958, Professor Herzog began his long and distinguished career as a scholar and academic when he accepted a position as an Assistant Professor at Syracuse University College of Law. Although specializing in International Law, Professor Herzog has taught a variety of classes while at Syracuse. These courses include Conflicts of Law, Comparative Law, Law of the European Communities and Torts.

Over his career, Professor Herzog has taught at a number of institutions. He was a Visiting Professor at University Paris I (Panthéon-Sorbonne)(1976-1977); Visiting Adjunct Professor at Cornell University Law School (Spring 1976); Visiting Professor at the University of Burgundy in Dijon, France (Spring 1977); Visiting Professor at the University of Fribourg in Switzerland (Fall 1987); and Lecturer at the College of Europe in Bruge, Belgium (Spring 1989).

In addition to academic positions, Professor Herzog has held other professional positions including Staff Member to the New York State Joint Legislative Committee on Metropolitan Area Studies (1958-1959); Staff Member at the Columbia University Project on International Procedure (1960-1963); and Associate Director of the Columbia University Project on European Legal Institutions (1968-1972).

Professor Herzog is a member of several professional and learned societies, including the American Society of International Law; the American Journal of Comparative Law, where he served on its Board of Editors; the International Law Association; International Academy of Comparative Law, where he has served as a National Reporter since the IX Congress; German-American Lawyers Association; Wissenschaftliche Gesellschaft für Verfahrensrecht; the Societé de Legislation Comparée; Revue Critique de Droit International Privé, where he served as an American Correspondent. Additionally, he has served as the 1982 Chair of the AALS Section on Conflicts of Law, and the 1983 Chair of the AALS Section on Comparative Law.

Professor Herzog is also an accomplished writer having authored a number of articles and several books in the English, French and German languages. These writings cover diverse areas of the law including: Conflicts of Law, Constitutional Law, Law of the European Community, French Civil Procedure and Tort Law. Additionally, he has lectured on a variety of legal topics around the world, including lectures in France, Germany, Greece, Netherlands and Sicily.

Throughout his life he has been the recipient of many awards, scholarships, fellowships and research grants. In recognition of his scholarship and devotion to the College of Law, Professor Herzog was presented with the Chancellor's Citation for Academic Excellence in 1983. Additionally, he was honored as a Crandall Melvin Professor at the College of Law in 1983.

Professor Herzog officially retired in January of 1995, and now spends his spring semesters in Paris. He continues to teach Comparative Law and the Law of the European Union at the College of Law each Fall. Honoring Professor Herzog would be incomplete without mentioning his family. His wife Bridgitte, avocat á la Cour d'Appel de Paris, is also a graduate of the Syracuse College of Law. They also have two children, Paul, a graduate of Tulane Law School, and Elizabeth-Ann, currently a student at Syracuse University.

Professor Herzog's love of teaching and the law inspired his colleagues and many generations of law students. The College, the Journal, and his friends are honored to be able to pay tribute to Professor Herzog and dedicate this Festschrift to him.

> Dean Daan Braveman & The Journal Staff

THE WORKS OF PETER HERZOG

I. BOOKS

Peter E. Herzog & Martha Weser, Civil Procedure in France (1967).

International Law, National Tribunals and the Rights of Aliens (in collaboration with Frank Dawson & Ivan Head, Syracuse Univ. Press 1971).

1-6 Peter E. Herzog et al., The Law of the European Communities (1976 & Supps. 1976-1995).

HARMONIZATION OF LAWS IN THE EUROPEAN COMMUNITIES: PROD-UCT LIABILITY, CONFLICT OF LAW AND CORPORATION LAW (Peter E. Herzog ed., 1983).

COMPARATIVE LAW, CASES AND MATERIALS (Peter E. Herzog, R.B. Schlesinger, H. Baade & M. Damaska eds., 3rd. ed. 1988 & Supp. 1994).

II. ARTICLES IN SERIES

Conflict of Laws, Annual Survey of New York Law, 14-36 SYRA-CUSE L. REV. (1962-1985).

The Legal Status of Foreign Workers, United States National. Reports for the IXth International Congress of Comparative Law 351 (1974).

Private International Law Aspects of Labor Relations, 30 Am. J. Comp. L. 143 (1982) (Supp.).

The Reform of Medical Liability: Tort Law or Insurance, 38 Am. J. Comp. L. 99 (1990) (Supp.).

The Probative Value of Testimony in Private Law, 42 Am J. Comp. L. 275 (1994) (Supp.).

III. PRINCIPAL ARTICLES

The Conflict of Laws in Land Transactions: The Borderland Between Contract and Property Matters-A Comparative View, 8 Syracuse L. Rev. 191 (1957).

Liability of the State of New York for 'Purely Governmental' Functions, 10 Syracuse L. Rev. 30 (1958).

Proof of Fact in French Civil Procedure: The Reforms of 1958 and 1960, 10 Am. J. Comp. L. 169 (1961).

Recent Developments in Choice of Law in the United States, J. Bus. L. 273 (1964).

Reforme de l'organisation judicaire, de la procedure civile et du droit commercial dans l'Etat de New York, 16 R.I.D.C. 579 (1964).

International Cooperation in Litigation: France, in Int'l Cooperation in Litig.: Eur. 119 (1965).

The Procedure Before the Court of Justice of the European Communities, 41 WASH. L. REV. 438 (1966).

International Law, National Tribunals and the Rights of Aliens: The West European Experience, 21 Vand. L. Rev. 742 (1968).

The Use of Impartial Experts in French Civil and Administrative Procedure, in Fed. Hearing Examiners 6th Ann. Proc. (1968).

Regime Matrimonial et Renvoi dans deux recentes decisions de la Cour Supreme de New York, 57 R.C.D.I.P. 607 (1968).

Etat de New York - successions - Loi applicable, 58 R.C.D.I.P. 364 (1969).

Summary Adjudication: France, 4 Int'l Law. 888 (1970).

Comparative Study of Eminent Domain Procedures and Practices, in Report of the State Commission on Eminent Domain 120 (1971).

Note sous Weil C. Curtis-Mallet Prevost, 60 R.C.D.I.P. 311 (1971).

Immigration et Condition des Estrangers dans le droit des Etats Unis, 61 R.D. Int'l. & D. Comp. 205 (1972).

The Reform of the Legal Profession and Legal Aid in France, 22 Int'l & Comp. L. Q. 462 (1973).

La théorie du forum non conveniens en droit anglo-américain, un aperçu, 65 R.D. INT'L. & D. COMP. 1 (1976).

The Common Market Convention on Jurisdiction and the Enforcement of Judgments; an Interim Update, 17 VA. J. INT'L L. 417 (1977).

The Protection of Minors in Labor Law, 26 Am. J. Comp. L. 293 (Supp. 1978).

Attacks on Judgments, in 16 Int'l Encyclopedia of Comp. L.: Civil Procedure 143 (1982).

La théorie de l'Act of State dans le droit des Estats Unis, 71 R.D. Int'l. & D. Comp. 617 (1982).

The European Communities—A Model for Settlement in the Middle East, 13 Syracuse J. Int'l L. & Com. 509 (1987).

Einführung in das Rechtssystem der Vereinigten Staaten, in Rechnungslegung, Prüfung, Wirtschaftstrecht und Steuern in den 169 (E. Sonnemann ed. 1989).

Histoire du droit des Etats Unis, in Précis de Droit des Etats Unis (A. Levasseur ed. 1990).

Droit International Privé, in Précis de Droit des Etats Unis (A. Levasseur ed. 1990).

Recent Developments in Products Liability in the United States, 38 A. J. Comp. L. 539 (1990).

Neure Entwicklungen im Internationalen Privatrecht der Vereinigten Staaten, in Österreichs Weg in die EG—Beiträge zur Europäischen Rechtsentwicklung 191 (F. Schwind ed., Vienna Österr, Akademie der Wiss 1991).

Constitutional Limits on Choice of Law, 234 R.C.A.D.I. 239 (Hague 1992).

Die Haftung bei Dienstleistungen in den Vereinigten Staaten, Eine Kurze Zusammenfassung im Hinblick auf den Vorschlog einer EWG-Richtlinie, in Haftung der Dienstleistungsberufe—Natürliche Vielfalt und Europäische Vereinheitlichung (E. Deutsch & J. Taupitz eds., 1993).

The Enduring Significance of Hans Kelsen, in Der Einfluß Deutscher Emigranten auf die Rechtsentwicklung in den USA und in Deutschland (M. Lutter, E.C. Stiefel & M.H. Hoeflich eds., 1993).

Brussels and Lugano, Should You Race to the Courthouse or Race for a Judgment, Am. J. Comp. L. 379 (1995).