A Plea for Private International Law

A new paper by Michael Green, *A Plea for Private International Law (Conflict of Laws)*, was recently published as an Essay in the *Notre Dame Law Review Reflection*. Michael argues that although private international law is increasingly important in our interconnected world, it has fallen out of favor at top U.S. law schools. To quote from the Essay:

> *Private international law has not lost its jurisprudential import. And ease of travel, communication, and trade have only increased in the last century. But in American law schools (although not abroad), private international law has started dropping out of the curriculum, with the trend accelerating in the last five years or so. We have gone through US News and World Report's fifty top-ranked law schools and, after careful review, it appears that twelve have not offered a course on private international law (or its equivalent) in the last four academic years: Arizona State University, Boston University, Brigham Young University, Fordham University, University of Georgia, University of Minnesota, The Ohio State University, Pepperdine University, Stanford University, University of Southern California, Vanderbilt University, and University of Washington. And even where the course is taught, in some law schools—such as Duke, New York University, and Yale—it is by visitors, adjuncts, or emerita. It is no longer a valued subject in faculty hiring.*

I could not agree more. Nor am I alone. Although Michael did the bulk of the research and writing for the Essay, he shared credit with a number of scholars who endorse the arguments set forth therein. This list of credited co-authors includes:

> *Lea Brilmayer (Yale Law School)*
> *John Coyle (University of North Carolina School of Law)*
> *William S. Dodge (George Washington University Law School)*
> *Scott Dodson (UC Law San Francisco)*
> *Peter Hay (Emory School of Law)*
> *Luke Meier (Baylor Law School)*

Jeffrey Pojanowski (Notre Dame Law School)
Kermit Roosevelt III (University of Pennsylvania Carey Law School)
Joseph William Singer (Harvard Law School)
Symeon C. Symeonides (Willamette University College of Law)
Carlos M. Vázquez (Georgetown University Law Center)
Christopher A. Whytock (UC Irvine School of Law)
Patrick Woolley (University of Texas School of Law).

In addition to his empirical findings about the declining role of Conflict of Laws in the U.S. law school curricula, Michael seeks to explain precisely why the class matters so much and why it has fallen out of favor. He argues convincingly that part of the decline may be attributed to poor branding:

> *We suspect that part of the problem is that many American law professors and law school administrators are unaware that conflict of laws is private international law. One of us is an editor of a volume on the philosophical foundations of private international law, and in conversation several law professor friends (we won't name names) told him that they weren't aware that he worked on private international law, even though they knew that he worked on conflicts. Reintroducing conflicts to the law school curriculum might be as simple a matter as rebranding the course to make its connection with international law clear, as Georgetown has done.*

He also considers—and rightly rejects—the notion that this is an area about which practicing attorneys can easily educate themselves. To quote again from the Essay:

> *Another argument that the disappearance of conflicts from the law school curriculum is not a problem is that a practitioner can identify a choice-of-law issue and get up to speed on the relevant law in short order. The truth, however, is that one is unlikely to recognize a choice-of-law issue without having taken conflicts. We have often been shocked at how law professors without a conflicts background (again, we are not naming names) will make questionable choice-of-law inferences in the course of an argument, based on nothing more than their a priori intuitions. They appear to be unaware that there is law—and law that differs markedly as one moves from one state or nation to another—on the matter. One can recognize a choice-of-law issue only*

> *by knowing what is possible, and someone who has not taken conflicts will not know the universe of possibilities.*

The Essay contains a host of additional insights that will (fingers crossed) help to reinvigorate the field of private international law in the United States. Anyone with an interest in conflicts (or private international law) should read it. It can be downloaded here.

A version of this post also appears at Transnational Litigation Blog.