PRECLASSICAL CONFLICT OF LAWS

To better appreciate present-day private international law and its future prospects and challenges, we should consider the history and historiography of the field. This book offers an original approach to the study of conflict of laws and legal history that exposes doctrinal lawyers to historical context, and legal historians to the intricacies of legal doctrine. The analysis is based on an in-depth examination of Medieval and Early Modern conflict of laws, focusing on the classic texts of Bartolus and Huber. Combining theoretical insights, textual analysis, and historical perspectives, the author presents the preclassical conflict of laws as a rich world of doctrines and policies, theory and practice, context and continuity. This book challenges preconceptions and serves as an advanced introduction which illustrates the relevance of history in commanding private international law, while aspiring to make private international law relevant for history.

NIKITAS E. HATZIMIHAIL is Associate Professor of Private Law, Comparative Law, and Legal History at the University of Cyprus. His doctoral dissertation received the Addison-Brown commencement Prize at Harvard Law School.

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Uxori et parentibus carissimis

Historia vero testis temporum, lux veritatis, vita memoriae, magistra vitae, nuntia vetustatis, qua voce alia nisi oratoris immortalitati commendatur?

And as History, which bears witness to the passing of the ages, sheds light upon reality, gives life to recollection and guidance to human existence, and brings tidings of ancient days, whose voice, but the orator's, can entrust her to immortality?

Cicero, *De oratore*, 2.36 (E. W. Sutton trans., Loeb Classical Library)

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ACKNOWLEDGMENTS

This book is a historical contribution to the study of contemporary private international law. Adopting a historical perspective was a gradual process, as I sought to understand this legal field and its place within the study and practice of law. One way of looking at modern doctrine is as the estuary of past notions, doctrines, and ideas. Such a metaphor highlights the complexity – and unique value – of our own legal environment, but is also an invitation to seek out the very different environments traversed by the main river and its tributaries – shaping them and, in turn, being shaped by them.

This is, accordingly, a story about Medieval, Early Modern, and subsequent jurists and the systems they constructed, as they employed tools both familiar and unfamiliar to us in the present day, dealing with problems we can identify with as well as with now-obsolete aspects of the evolving legal treatment of human existence. These discursive ancestors were children of their time but also strove to bequeath to worlds more different than they could have imagined. We certainly cannot grasp past or present conflicts theories, principles and norms, or potential alternatives, without an appreciation of the world in which they originated and where they are asked to operate. At the same time, so much of conflicts doctrine has shown remarkable resilience across time and space. Context is vital, yet it is clearly not everything.

It is customary to express frustration, or fascination, with the present state of conflict-of-laws doctrine. Indeed, such contrasting feelings have motivated this book. But, at its heart lies an earnest conviction about the value of private international law as a juristic approach to global governance and the management of legal diversity. Private international law is a distinct legal discipline, formed out of the creative tension between the "domestic" institutions and policies of what we conceive as private law, and the "public" or "quasi-public" institutions and aspirations of international governance. Private international law cannot be separated from – but neither should it be subordinated to – either. This

socio-epistemological understanding of the legal discipline has informed both my own historical narrative, as well as the book's emphasis on the importance of historical consciousness as well as on the inherent subjectivity of existing historical literature. Cicero's exhortation epitomizes the twin themes of the book: awareness of the oratorical – even instrumentalist – element in the writing of history, as well as hope for its potential to "shed light upon reality" and improve our better selves.

Preclassical Conflict of Laws began its life as a Harvard Law School doctoral dissertation on private international law and comparative legal history. That dissertation – which was awarded the Addison-Brown Prize at the 2003 Harvard commencement and, shortly thereafter, a book contract from Cambridge University Press – possessed many of the qualities and theoretical ambition associated with younger scholars. The overall conception of the dissertation survives in this book, along with many fragments, but that early work has been revised, significantly expanded, and re-revised substantially – albeit intermittently as professional obligations allowed – over a prolonged period, until it was finally completed in the midst of the COVID-19 pandemic. This is, therefore, a different, more mature work: perhaps less theoretically precocious (its author being all too aware of the vastness of existing but unexplored ideas), but more confident in the analysis of Medieval and Early Modern doctrine, the result of hands-on exposure to legal teaching and problem-solving (and more comfortable access to primary sources).

The book owes its existence to a number of people. First among them are my doctoral supervisors, David Kennedy and Charles Donahue Jr.: their approaches were very different from one another but my work clearly carries the influence of both. David introduced me to intellectual legal history, legal theory, critical approaches, and textual analysis. Charlie instilled in me the importance of context and appreciation for the hard toil of legal history. They also gave, by word and example, invaluable advice that I still carry with pride and gratitude. Next comes my third committee member, Duncan Kennedy, our *maître d'armes*, who started my journey in private law theory and the intellectual history of legal doctrine, and another gentle giant, the late Arthur Taylor von Mehren. I am especially grateful to Professor Bernard Audit, my external examiner, for his attention and ideas, as well as to Charalambos Pamboukis, who initiated me to the field of private international law, Joseph Singer, who supervised my master's thesis, and Richard Fentiman, who has influenced the pragmatic turn of my doctrinal outlook as reflected in the completed book. Of the many teachers and mentors

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