TRANSNATIONAL LAW. By Philip C. Jessup. New Haven: Yale University Press, 1956. Pp. 113. $3.00.

SINCE the second World War an increasing number of complex situations have arisen in which governments, private interests and international organizations have been involved with each other. The extraterritorial application of the United States antitrust laws,[1] for example, has created a whole range of problems for corporations. Various takings of private property by nationalization, the most recent being the Suez Canal case, have raised questions of the rights and duties of states, as well as those of private individuals, and how they can be accommodated and enforced. In the field of international organization arise such matters as the effect of resolutions of the United Nations General Assembly, recently considered by the International Court of Justice, and the principles to be applied by the United Nations Administrative Tribunal when dealing with the rights of United Nations employees having tenure.

In considering principles of law applicable to such differing types of situations, the teacher, the judge or the practitioner may need to draw on various fields of law, now quite separately organized and classified. In one case, it may become important to examine and apply principles of conflict of laws, and public international law, as well as the rules arbitrators consider in deciding controversies according to legal principles specified by agreement. It has thus become necessary to cut across the lines of various legal disciplines. Unless this process is recognized, relevant sources of law, and hence precedent, may be ineffectively interpreted or even overlooked.

Philip C. Jessup, Hamilton Fish Professor of International Law and Diplomacy at Columbia University, addresses himself to this problem in the three Storrs Lectures on Jurisprudence delivered at the Yale Law School in February 1956. They are printed without substantial change as three essays entitled *Transnational Law.* This arresting title emphasizes Jessup's view of the need to look into various fields of law when considering actions and events transcending national frontiers.

Transnational law is not likely to become a term of art for a new body of law, nor does Jessup so intend it. He is not suggesting a new sort of "brooding omnipresence" to be known by this title. Instead, he suggests an approach to what has been called the international sector of law. This approach, he says, supplies a larger storehouse of rules, which can be used without having to decide that a case should be governed by public or private law. In this connection, he addresses very directly law teachers and law schools when he states that if students "are nourished on the pap of old dogmas and fictions, it is not to be expected that they will later approach the solution of transnational problems with open-minded intelligence instead of open-mouthed surprise."[2]

1. United States v. Imperial Chemical Industries, Ltd., 100 F. Supp. 504 (S.D.N.Y. 1951), *decree issued,* 105 F. Supp. 215 (S.D.N.Y. 1952); British Nylon Spinners, Ltd. v. Imperial Chemical Industries, Ltd., [1953] 1 Ch. 19 (C.A.).

2. Pp. 108-09.

Jessup has not been alone in thinking and writing about this problem. For example, C. Wilfred Jenks,[3] writing contemporaneously, considers that the substance of law has kept up with changing needs to a remarkable extent, but he feels that the existing concepts of the structure and arrangements of international law need reexamination. Although it does not reflect reality to state that international law deals exclusively with relations between states, this area of law is certainly one part of any system of law. Hence, Jenks suggests work on a new classification or arrangment of fields of law. This would lead to an alternative conception of international law as representing "the common law of mankind in an early stage of its development," and comprising "a number of main divisions of which the law governing the relations between States is only one."

Jessup and Jenks would probably agree on the nature of the problem; they would concur that their respective approaches are experimental, and that they are discussing, in part, law as it should be expected to develop. Jessup emphasizes a procedure for approaching the concrete case, whereas Jenk's principal emphasis is on a new classification. Jessup observes, although not commenting on Jenk's views, that his own approach, at least for the time being, is to "avoid further classification of transnational problems and further definitions of transnational law."[4]

The first chapter of Jessup's volume analyzes the universality of human problems, the second, the power of judicial tribunals to deal with them; and the third suggests what law could be applied to their solution. In developing his theory that human problems are universal, Jessup begins with three "dramas in two scenes." One describes the case of M. v. F. Mary married Frank many years ago when she was feeble and he was strong and domineering. Now Frank runs her life and she sees her friends Bernice and Philippa leading lives of their own, so she wants a divorce. In the second scene Morocco "married" France many years ago when she was weak. Now the protected life has palled, and she has gone to the United Nations to get independent life like Burma and the Philippines.

This amusing and provocative device raises at once the question of what the behavioral sciences know and can offer about relationships between states and relationships between individuals. The issue is how far states and individuals act in the same way or differently. Arguably, states do not have feelings, wishes and ideas directly comparable to those of individuals. Thus one may agree that problems are universal, but still hope for further research on parallels between procedures for handling disputes between individuals and between states. The author does not go beyond saying that if there are common elements in the domestic and international dramas, greater experience in analyzing the former may help solve the latter.[5]

The power to deal with problems, the second chapter of the book, is a concise analysis of theories of jurisdiction which have been advanced by tribunals

3. Jenks, *The Scope of International Law*, 31 BRITISH YEARBOOK OF INT'L LAW 1 (1956).

4. P. 7.

5. P. 16.

in dealing with transnational, civil and criminal cases. Jessup shows, with concrete illustrations, how far in practice tribunals have abandoned their sole reliance on the territorial theory of jurisdiction, as classicly formulated by Holmes in the *Banana Company* case.[6] This analysis leads the author to conclude that the power element in jurisdiction is the degree of possibility that the state's action will be effective. Therefore it would be the function of transnational law to proceed from the premise that jurisdiction is essentially a matter of procedure "in the manner most conducive to the needs and convenience of all members of the international community."[7]

Jessup opens his third chapter with the dilemma presented by the *British Nylon Spinners* case,[8] which he says illustrates the problems arising when present theories of jurisdiction are applied to transnational situations. He suggests an alternative approach: why, he asks, should not juridical tribunals be able to apply a principle of *lex conveniens*—selecting, within certain limitations, what they consider the most effective law? He recognizes that this might result in a tribunal applying its own notions of law, and he describes instances in which something of this sort has occurred. Thus, he concludes that a tribunal dealing with a transnational problem should feel free to apply one or more of the bodies of law into which the field of law is traditionally divided. Here he seems to come close to the point of view of Jenks that the need for a new approach to transnational questions is one of classification.

Throughout the book Jessup uses thought-provoking illustrations. For example, he suggests a similarity in the development and use of United Nations forums and procedures as a means for evolving a social consciousness, and the development and use of minority stockholders' rights. Thus, in the world contest between the haves and the have-nots he concludes that if something is not done by the haves to resolve the conflict, then the United Nations General Assembly may be the alternative to domestic violence or international war.

Jessup further concludes that when one considers foreign capital which has moved into underdeveloped countries for economic reasons, a balance needs to be struck between the interests of the underdeveloped country and the owners of such private capital. He infers that the balance is now weighted in favor of private capital. Thus he would expect, in the future, some form of United Nations regulation, perhaps along the lines suggested by the United Nations Committee on Restrictive Business Practices,[9] as a development of transnational law.

In the light of the Suez Canal Company nationalization and of similar experiences in other parts of the world, there is much interest in how transnational law may be expected to develop. To assure the performance of agreements,

6. American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909).

7. P. 71.

8. British Nylon Spinners, Ltd. v. Imperial Chemical Industries, Ltd., [1953] 1 Ch. 19 (C.A.).

9. UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE AD HOC COMMITTEE ON RESTRICTIVE BUSINESS PRACTICES, SUPP. No. 11 (Doc. No. E/2380) (1953).

controversies between states and private individuals must be decided by law and not by unilateral political action. Hence this reviewer feels that in the United Nations organs, as outside, the balance is much in favor of the state, even though such state may be comparatively small and weak.

Within the necessary limitation of three chapters, Jessup suggests a way of thinking about law in a complex field. He continues his analysis begun in the Introduction to his *Modern Law of Nations*,[10] but adds an outline for "much more exploration and analysis." The author's illustrations show directions in which he would hope and expect that law will develop. Here he opens up questions to which he attempts no definitive answers. There will be differences of view about the implications of some of these illustrations.

This volume is both stimulating and provocative. It effectively makes the transition from general principle to concrete case, and it provides insights which can insulate the reader from complete surprise when confronted by problems for which the digests supply no quick answers or leads. The author's warmth, his strong, personal views on specifics, and not least of all his humor, make the pages come alive.

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10. JESSUP, A MODERN LAW OF NATIONS (1948).

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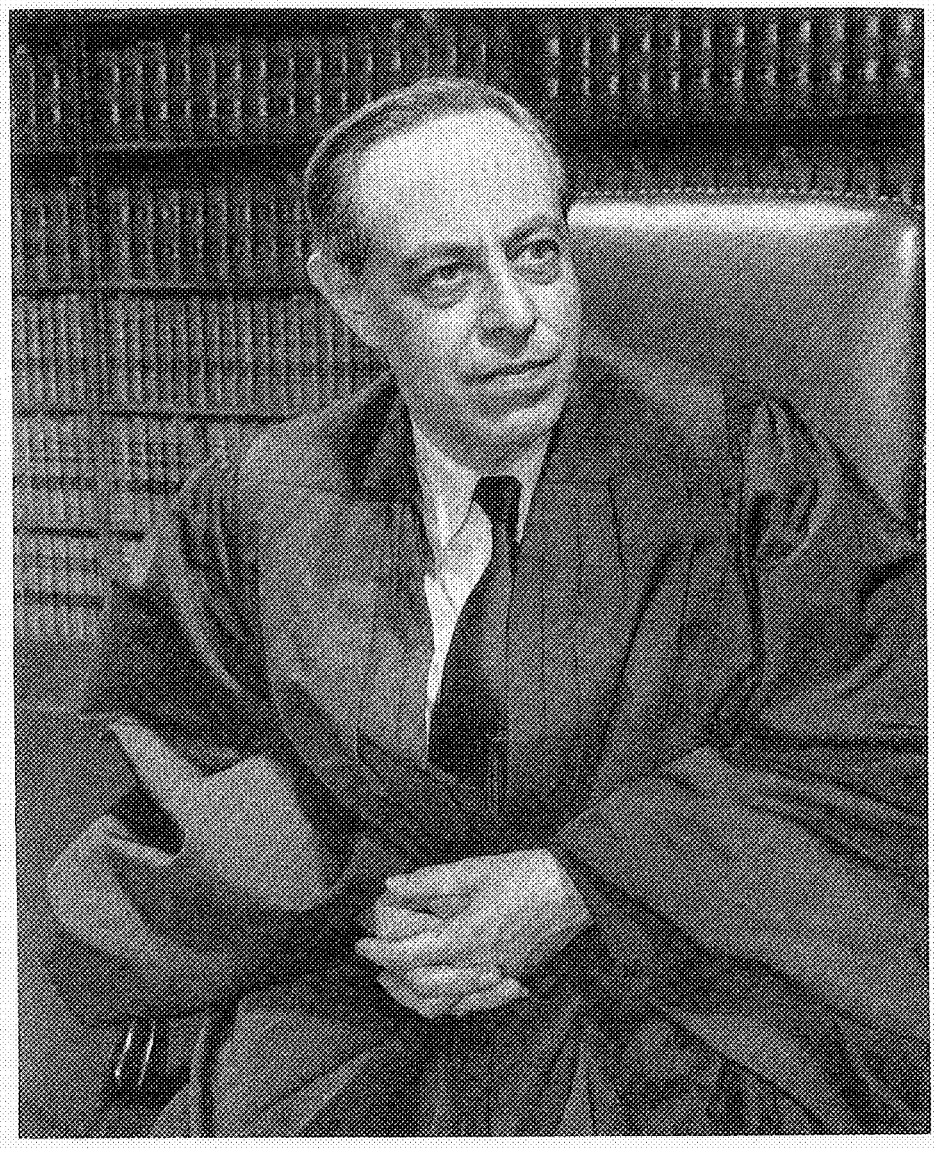

The Journal dedicates this issue to the memory of
JUDGE JEROME N. FRANK