European lawyers with a comprehensive, literary statement of a great mass of legal rules—the *Corpus Juris*. As a natural result, the civil lawyer's attention traditionally centered on written texts; the academic lawyer took a place at the center of the system. In the long run, a speculative, rational and systematic approach to legal science was encouraged.[1] The civil law, instead of focusing its attention on the law currently administered in the courts, has thus historically emphasized a general body of rules in the conviction that, though they might not now be, they would in due time become the law in action.

Professor Lawson also discusses in admirable fashion many of the concepts today found in the civil and the common laws, considering particularly the extent to which these concepts have produced results different from those which the systems might have reached through a purely functional approach to the problems to be resolved. The continental classification as a part of property law of many matters that we treat in the law of torts furnishes one example.[2] In German law, problems handled in the common law under the tort rules relating to nuisance are treated as going to the ambit of ownership and form part of the law of property. "[T]his attitude of mind led German law to limit the remedy, if no fault were proved in the neighbor, to a declaration or injunction" (p. 144). The problems of formation and form in the law of contracts are further areas in which the stock of concepts with which the various systems operate have had profound implications for the solution of practical problem.[3]

A Common Lawyer Looks at the Civil Law contains abundantly the insights of the learned and wise scholarship of one whose interests led him beyond the confines of his native legal system to a profound study of the legal systems of continental Europe.

ARTHUR TAYLOR VON MEHREN*

* Professor of Law, Harvard University.

[1] See generally pp. 62–81, 161–69.

[2] See pp. 143–45.

[3] See pp. 113–35, 148–52, 157–73; for another discussion of certain of these problems consult von Mehren, The French Civil Code and Contract—a Comparative Analysis of Formation and Form, 15 La. L. Rev. 687 (1955).

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

This little book contains the three Storrs lectures delivered by Professor Jessup at Yale last winter. Within the tradition of those lectures, made great by such as Cardozo, Pound, Becker, Hutchins and Radin, Jessup wrestles with large jurisprudential problems. He focuses attention upon neglected areas of what he calls "transnational law" and suggests an approach which is quite different—and much more sensible—than that of more traditional scholarship.

"Law" for Jessup is composed of all rules and practices which regulate ac-

tions and events. When those actions and events transcend in any aspect a national frontier, then the "law" which regulates, whatever its formal origin and whoever the lawmaker may be, is "transnational." Thus transnational law includes both public and private international law as well as national laws which control transnational events. Nor does his concept stop with formal enactments. He includes the rules and processes of public and private agencies dealing with transnational facts; for example, the United Nations, European Payments Union, North Atlantic Treaty Organization or the Achnacarry Agreement between the Standard Oil of New Jersey, Shell Oil and Anglo-Persian Oil Companies.

By employing such a broad-gauged view Jessup seeks to open up to the domain of legal scholarship a large and important area of rules and practices now too often arbitrarily excluded by a priori classification. By using new language he hopes to avoid sterile debate as to the content of "international law" and the all-or-nothing consequences which can flow from too-rigid categorization into rules governing states in their inter-sovereign relations on the one hand, and the several national laws on the other. The resolution of transnational problems, whoever the decision-maker, requires more flexibility than contemporary theory would allow. In addition, there is a body of experience in the decisions of various international agencies which fits neither category comfortably, if at all, but which illustrates the approach to problems which Jessup recommends. In a sense it is a return to an older "natural law" tradition, atrophied by nineteenth-century formalism, but capable of rebirth through comparative techniques.

The theme of the lectures is suggested by the title of the opening chapter, "The Universality of the Human Problems." Here, in a very engaging and sometimes convincing way, Jessup posits a similarity between many transnational and national problems in terms of human wants, needs and aspirations. Many of the problems which now are a source of dispute and tension in the transnational arena have had their national counterparts and have become, in fact, transnational merely because of the essentially irrelevant and accidental interposition of boundaries in a shrinking world. Solution of these problems at a national level within the various states has given us a fund of common experience and law, national in origin but relevant in its essential principles to the solution of transnational problems. Point Four, for example, is a transnational application of the old AAA; there is an analogy between the Populist and Granger movements of the old West and the socialist-nationalist aspirations of the contemporary East. The conditions and forces which make for transnational difficulties have often had domestic counterparts for the reason that they are the human problems of an industrializing and democratizing society: poverty, political participation and the difficult adjustment and compromise of group differences in a rapidly changing social structure.

In his next two lectures Jessup examines some existing doctrine of interna-

tional law and conflict of laws with regard to "jurisdiction" and "choice of law." It should surprise no one that he finds it wanting. At heart the difficulty lies with a basic orientation toward the status of the decision-maker rather than the practical problem to be resolved. The competency of the decision-maker should be related not to geography but rather to considerations of the convenience and needs of the international community. Jurisdiction, Jessup believes, is largely a matter of procedure, not "power" or "territorial sovereignty," and the cases should be re-examined and re-shuffled accordingly. There is sufficient common ground, as indicated by similar domestic practices, to make such an approach feasible.

What is true of jurisdiction is also true of choice of law. Here Jessup reviews the too-little examined experience of international agencies faced with something akin to choice of law problems. In these cases he finds little use of conflicts rules as such, though he does find much reference to the various national laws for the purpose of shaping rules which conform to reason and justice in the light of the facts of the particular controversies. It is an experience which gives authority to his general theme and one which, obviously, he would favor extending to all arenas in which transnational disputes are resolved. Because experience with transnational agencies to determine transnational rules has been favorable and because there are in many areas developed bodies of national experience with regard to similar problems upon which they can freely draw, Jessup favors more use of transnational groups, such as UN agencies, both to formulate transnational rules and to decide transnational disputes.

It is apparent from even this brief summary that Jessup has put a good deal into a few pages. He has done so in a manner which is eminently readable. His style is simple and direct. Like the man himself there is no pretension and much wit and wisdom. Throughout he reflects a tolerance of different views, an awareness of the limitations of easy solutions, a deep understanding of human foibles and the pains of social growth. These are qualities which made Jessup an outstanding diplomat and they are no less essential ingredients of effective scholarship.

I agree with Jessup that a broad view of law is indispensable to both understanding its role in transnational society and to suggesting creative and workable solutions to transnational problems. Domestically we do not attempt to separate law from the socio-political processes of the community though we do, of course, seek to guide and limit the authority of particular decision-makers. In our own society we have experienced tremendous evolution in power processes and hence in the legal system. Much parental authority has passed from the family to the teacher and to the non-parental employer as well as to private and public social agencies. A prior judicial authority to formulate policy now rests with other officials in a new governmental complex. The employer and the land owner have been bureaucratized. As society has become more complex and interdependent we have seen the law, and the need for law, grow with it. The

employer no longer relies on personal supervision and ad hoc decisions; administration involves complicated delegations of authority ("jurisdiction") through tables of organization, budgets and formal company rules and policies. Legislatures have adopted increasing numbers of rules and practices for doing business, dividing authority and function among their members, sometimes formally and sometimes through custom. In all aspects of community life law grows in direct proportion to the complexity of the needs of its members. It is no monopoly of courts and judges, and a conception geared to statutes and cases, to only the most formal body of doctrine, is wholly inadequate. Yet it is this conception of law as a body of binding and formal rules which dominates, and suffocates, scholarship in the international arena.

It is only too apparent that law in the world community is growing rapidly. In the past few months there have been particularly dramatic incidents. One need only look at the consequences of Eden's failure to consult the United States on his Middle East venture. Jessup's transnational lawyer would, I think, be sensitive to the problem of common interest and divided power. He might not feel ready to formulate a hard and fast rule of "consultation," but neither would he draw unwarranted inferences from this difficulty. At the very least he would have a sense of direction.

There are other transnational problems less fluid and less politically charged where, as Jessup points out, we are more nearly ready to formalize rules and delegate authority. Unhappily the doctrine which does exist is not merely inadequate but a positive handicap to common sense. Jessup has inventoried a portion of these Augean stables. To cleanse them we must deal directly with the problems raised by multiple authority in regulating transnational events. This process will undoubtedly involve new institutions of the type he indicates.

In guiding these new institutions Jessup suggests we draw heavily upon national experience with like problems. There is much merit in this suggestion, particularly because of its capacity to merge our legal systems and build in a lawyer-like way upon a body of existing experience. But we will need to clarify both our assumptions and our objectives in a somewhat sharper manner than is possible in three lectures or one review. I would give more emphasis than does Jessup to insights into the legal and political processes which other social scientists can offer to this task. He stops well short of what has already been proposed in the more comprehensive and systematic work of McDougal,[1] though in other respects their views are quite compatible.

Actually Jessup is something less of an iconoclast than he likes to picture himself. Certainly one exposed to the McDougal cosmology finds it difficult to characterize *Transnational Law* as too extreme. Perhaps this accounts for my feeling that the merits of this book are more in its potential impact than its novelty. I do not mean to suggest that Jessup is merely a sheep in wolf's

[1] McDougal, *International Law, Power, and Policy: A Contemporary Conception*, 82 *Recueil des Cours* 137 (1953).

clothing. Actually the implications of what he suggests could be quite far-reaching. But his presentation is so moderate, so craftsmanlike, such a skillful blend of old and new, that one hopes even the most timid and myopic may be beguiled into inching forward.

International law is a field of legal scholarship where the ratio of useful ideas to printer's ink consumed is, to put it mildly, sub-marginal. These lectures are an exception. Perhaps the respect with which their author is so generally regarded will help to make them influential in directing scholarship into some of the productive channels he suggests. One can at least hope.

NICHOLAS DE B. KATZENBACH*

* Professor of Law, University of Chicago.