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THE SIGNIFICANCE IN CONFLICT OF LAWS OF THE
DISTINCTION BETWEEN INTERSTATE AND
INTERNATIONAL TRANSACTIONS

By ARMAND B. DU BOIS*

IT IS NOT without significance that "conflict of laws" rather than "private international law" is the term commonly used in the United States in denominating that branch of the law which "determines whether the law of one or of another state shall be applied to a legal situation."¹ In a federal state like the United States, by far the greater number of cases dealing with conflict of laws relate to situations where the contacts are divided among states of the union. It is the exceptional case that involves a country foreign to the United States. Moreover, if the history of conflict of laws be reviewed, it will be found that interstate or interprovincial conflicts as distinguished from conflicts between the laws of distinct national states have been of great importance in the development of the body of theory that has grown up around the subject. Problems arising from the existence of a multitude of Italian city states, with diverse laws, but all theoretically subject to the Holy Roman Empire, gave rise to the contribution of Bartolus (1314-1357)² who foreshadowed much of modern conflict theory. Conflicts between the coutumes of the provinces of the feudal kingdom of France inspired the speculations of D'Argentre (1519-1520) and Dumoulin (1500-1566-7).³

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¹(1930) Restatement of the Law of Conflict of Laws, No. 1, The American Law Institute.

²Bartolus, Beale's Translation. Beale comments in his *Treatise on the Conflict of Laws*, page 24:

"The tribal law gradually became assimilated with the law of the land, or rather, in many parts of the empire, more or less completely absorbed the Roman law, though in theory every part of the empire was during the early Middle Ages governed by imperial law, however much the imperial law of one portion of the empire might differ from that of another portion. But, throughout the empire, and especially in Italy, city-states developed and each of these had its own local ordinances, or statuta." Bartolus drew his illustrations primarily from the cities of Italy, although he did refer to England in his hypothetical cases without apparent distinction in treatment.

³Beale says in his *Treatise*, page 30, "France was a confederation of provinces, each with its own law which was called custom, and the customs of northern France retained small traces of the Roman law."

The work of the Dutch school, Huber, John Voet, was motivated by conflicts between "the laws of the confederated Dutch provinces practically autonomous states jealous of each other's independence and power."⁴ Huber exercised a great influence on Story who himself wrote with the American scene of interstate conflicts in mind. Thus a conflict theory which still influences to a large extent American conflict law had been formulated long before the appearance of nationalism or the national state as integral elements of western civilization.⁵

Moreover, it has only been for the past hundred years that communication and transportation facilities have made possible frequent international transactions. With the crystallization of the theory of nationalism, and with the increased importance of international transactions, it might have been expected that there would be some attempt to distinguish international from interstate conflicts. Strangely enough, the factor of a national boundary has not, in most cases, been deemed significant. Conflict learning, built up in a world of interstate transactions, was applied without hesitation to the international situation.

In the Anglo-American literature of conflicts discussion of a possible distinction is practically non-existent. Story does not consider the point.⁶ Neither Minor,⁷ Wharton,⁸ Goodrich,⁹ nor

⁴Beale, Conflict of Laws, in 4 Encyclopedia of Social Sciences 188; On the Dutch School, see also Lorenzen, E., Huber's *De Conflictu Legum*, (1918) 13 Ill. L. Rev. 375; Beale, *A Treatise on the Conflict of Laws* 18-61. Beale comments on page 38 of the latter work: "The scene of legal development in this subject shifted in the 17th Century to the Netherlands, where the creation of a confederated nation composed of legally independent provinces had the natural effect of stimulating interest in the conflict of laws; just as it had in France a century earlier, and in the United States two centuries later. A society inhabiting a number of federated provinces, each with its own law but united politically and socially into a single people, with constant intercommunication, requires a definitely fixed and workable body of principles for the solution of conflicts of law."

⁵For a keen analysis of the comparatively recent appearance of nationalism in Western Civilization, see Hayes, *Essays on Nationalism*.

⁶Story, *Conflict of Laws*, 1st ed., sec. 6, writes: "Questions of this sort must be of frequent occurrence not only in different countries wholly independent of each other but also in provinces of the same empire, governed by different laws as in the case of France before the revolution."

Then he goes on in sec. 7 with the generalization:

"It is plain that the laws of one country can have no intrinsic force *proprio vigore* except within the territorial limits and jurisdiction of the country."

In sec. 9 he says:

"The jurisprudence thus arising from the conflict of the laws of modern nations in their actual application to modern commerce and intercourse is a most interesting and important branch of public law. To no part of the world is it of more interest and importance than to the United States since

the Re-statement¹⁰ draw a differentiation between the two sorts of conflicts. The matter is concisely put by Beale, who says in his, *Treatise on the Conflict of Laws*,¹¹

"We have, it is true, the usual number of questions arising out of conflicts with foreign laws, but we have in addition a much larger body of litigation concerning conflicts of law within the nation. No American lawyer has suggested any important distinction between conflicts of national law and conflicts of local law."

Statements are readily found in American judicial opinions that the states of the Union are to be considered as foreign to one another. For example in the Minnesota Case of *Renlund v. Commercial Mining Company*,¹² the question was whether a non-resident alien could take advantage of the Minnesota Lord Campbell's Act, in connection with an accident occurring in Minnesota. Lewis, J. commented:

"In the first place, it must be admitted that there can be no valid distinction in the relations which exist between the several states of the United States and between a state and a foreign nation. There are no constitutional restrictions which limit the application of the statute in favor of the residents of other states and against non-resident aliens. But the argument is made that

the union of a national government with that of twenty-four distinct and in some respects independent states necessarily creates very complicated relations and rights between the citizens of those states which call for the constant administration of extra municipal principles." His hypothetical cases are derived from both international and interstate transactions.

⁷Minor, *Conflicts of Law* 3 says: "The states of this Union are sovereign states, save in so far as they have by solemn compact yielded their sovereignty to the federal government."

⁸Wharton, *A Treatise on the Conflicts of Law*.

⁹Goodrich, *Handbook on the Conflict of Laws* 457: "For many, perhaps most purposes in the conflicts of laws the states of the United States are treated as foreign to each other. The law of another state is foreign law, a corporation organized under the laws of another state is a foreign corporation. A claim in tort arising under the law of another state is as much a claim for a foreign tort as if it arose in England. A judgment of a court of another state is a foreign judgment in the sense that proceedings to collect the sum due may not be directly instituted upon the judgments."

¹⁰The Restatement definition of "state" which is the basis of the Restatement's analysis includes both a state of the United States and a foreign country. Section 2.

Compare Dicey, *International Private Law*, 2d ed., p. xl, definition of a foreign country as "Any country which is not England."

¹¹Beale, *Treatise on the Conflict of Laws* 142. Note also the dictum of the Civil Court of Avesnes (France) (1922) quoted in Eliesco, *Essai sur les Conflits de Lois dans l'espace sans Conflits de souveraineté* 67, "Pour les pays où s'élèvent des conflits interprovinciaux il est de règle universelle que ces conflits doivent être résolus d'après les mêmes principes que les conflits internationaux."

¹²(1903) 89 Minn. 41, 46, 93 N. W. 1057, 1059.

on account of the close relations of the states and their connection with the general government such discrimination was intended and should be made. Such a distinction does not seem to me to be founded upon any sound principles. There is no more reason for extending the application of the statute to a resident of another state than there is for extending it to the benefit of foreign subjects.¹³

On the other hand, judicial utterances can be discovered that indicate that the commercial and political ties that bind together the states of the Union should be given weight in conflicts problems. This argument was most eloquently put by Judge Thompson of the Saint Louis court of appeals in 1885. The case¹⁴ involved the question whether an assignment for the equal benefit of creditors made in Illinois by an Illinois resident would be recognized in Missouri in so far as the assignment attempted to transfer claims in an action pending in Missouri. Illinois would not have recognized a similar Missouri assignment. In disposing of the argument that recognition of the Illinois transfer should depend on the reciprocal recognition by Illinois of a Missouri transfer, the judge said:

"We have outgrown that juridical conception of the nature of the federal union which places the states of the Union in respect of the effect to be given to the laws of one state within the limits of another state in the relation of foreign countries such as the states of Europe bear to each other. These states are members of one national union. Their forms of government are, and must be under the federal constitution republican and hence similar to each other. Their people are homogeneous. They are bound together by the closest and most constant commercial intercourse. Their laws both common and statute are homogeneous in their character; so much so that the decisions of the courts of one state upon questions of the common and statute law or of equity are constantly cited as evidence of the law in the courts of other states whilst in the absence of proof of the law of other states,

¹³The language of Lewis, J. was quoted with approval by Stone, J., dissenting in *Bonright v. Chicago, Rock Island and Pacific R. R.*, (1930) 180 Minn. 52, 230 N. W. 457.

See also the statement of Carter, J. in *Dougherty v. American McKenna Process Company*, (1912) 255 Ill. 369, 371, 99 N. E. 619, 621; also the statement of Washington, J. in *Buckner v. Farley*, (1829) 2 Pet. (U.S.) 586, 590, 7 L. Ed. 528. The case involved the question whether a bill drawn in Maryland on a New Orleans resident was a foreign bill of exchange within the meaning of the judiciary act. He said: "For all national purposes embraced by the federal constitution the states and the citizens thereof are one united under the same sovereign authority and governed by the same laws. In all other respects the states are necessarily foreign to and independent of each other."

¹⁴*Zuppman v. Bauer*, (1885) 17 Mo. App. 678, 682.

the presumption obtains that it is the same as the law of the forum. Such being our situation and relations inter esse the doctrine which assigns to the statutes of a sister state of the union no greater credit or comity than would be assigned to the laws of a foreign state seems to be narrow, barbarous, and tribal."¹⁵

In a search for possible indications of significant differences between international and interstate transactions in conflict of laws, the realm of that "unruly horse" public policy seemed an auspicious place to start. In the application of the doctrine, now firmly rooted in American conflict theory, that a state will not enforce a law of a foreign state which is contrary to its public policy, there is some indication that the prevalence of interstate conflicts has been of influence.

In 1918, Judge Beach of Connecticut in an article entitled, *Uniform Interstate Enforcement of Vested Rights*¹⁶ called into

¹⁵A similar attitude to that of Judge Thompson was expressed in *Carey v. Schmetz*, (1909) 221 Mo. 132, 138, 119 S. W. 946, 947 where the Missouri court refused to enforce as penal an action arising out of the failure of a corporation to file reports as required by Colorado law. Valliant, J. referred to "the more intimate international law between the sister states of the Union." But, he concluded, "considering the large number of states of this Union, and their separate and distinct governmental policies, great confusion would result if rights of action created by the peculiar policy of one state could be carried into another state or the state to which it is carried be compelled to enforce it through its courts although contrary to its policy of its own laws."

In *Schroeder Wine and Liquor Co. v. Willis Coal and Mining Company*, (1913) 179 Mo. App. 93, 161 S. W. 352, a case involving an Illinois statutory exemption of wages from garnishment, Thompson, J.'s statement was approved. However, the decision turned on the point that the Illinois and Missouri exemption laws were alike in policy and differed only with respect to the amount of the exemption.

In *Wabash R. R. v. Hassett*, (1908) 170 Ind. 370, 379, 83 N. E. 705, 709, an action was sought to be brought on an Illinois wrongful death statute for an injury occurring in Illinois. Illinois would not have allowed an action in its courts on an Indiana injury. In disposing of the reciprocity argument, Montgomery, J. said: "The doctrine of reciprocity is a fair and reasonable principle to govern the conduct of independent nations in affording relief to aliens through their courts. The people of the United States comprise one nation banded together among other reasons to establish justice and to promote the general welfare. Each state may undoubtedly limit the jurisdiction of its court and formulate its local policy, but in the absence of a state policy declared and restricted by statute, the rule contended for is too narrow and illiberal to meet our approval."

¹⁶(1918) 27 Yale L. J. 656, 657, 662. Compare the statement of the German Waechter (quoted in Bar, *International Law* 92).

"Rights and relations which were established in one district of a state in conformity with its particular law must be judged of according to that particular law all over the entire state. If they are properly founded or acquired according to the law of the district, they must be recognized and protected all over the state in the same way. For it is the duty of the state to recognize and protect every legal relation in the way in which it has been established by the act of a particular law established by a state."

See also Pillet's remark in his *Principes du Droit Int. Privé* 46.

question, in the light of the full faith and credit clause, the propriety of a state refusing to give effect to the law of a sister state because of a supposed incompatibility with its policy. He wrote:

"I believe that the uniform interstate enforcement of vested rights is bound to come not only as a matter of justice but as a legal corollary of the national unity of the several states. . . . It would be an intolerable affectation of superior virtue for the Courts of one state to pretend that the mere enforcement of a right validly created by the laws of a sister state would be repugnant to good morals, would lead to disturbance and disorganization of the local municipal law or would be of such evil example as to corrupt the jury or the public."

This idea found expression in the leading case of *Loucks v. Standard Oil Company of New York*,¹⁷ in which Justice Cardozo, in allowing an action in New York on a Massachusetts wrongful death statute, said:

"The fundamental public policy is perceived to be that rights lawfully vested shall be everywhere maintained. At least that is so among the states of the Union. . . . There is a growing conviction that only exceptional circumstances should lead one of the states to refuse to enforce a right acquired in another."

In the course of his opinion, Justice Cardozo cited certain Massachusetts decisions as indicating the change of attitude of the Massachusetts courts toward wrongful death statutes. The earlier Massachusetts rule did not permit recovery on a wrongful death statute of another jurisdiction.¹⁸ Nevertheless, in 1909 when it was sought to recover in Massachusetts on a New York Lord Campbell's Act, the action was allowed, with the court saying, "The tendencies of later decisions have also been towards a broader comity in the enforcement of rights created by legislation of sister states."¹⁹ However, when the question later arose as to whether

"Entre communautés comprises dans un même corps politique il serait inintelligible qu'un acte régulièrement accompli dans un lieu quelconque n'eût pas son effet assuré sur tout le territoire de la fédération."

¹⁷(1918) 224 N. Y. 99, 113, 120 N. E. 198.

¹⁸*Richardson v. New York Central R. R.*, (1867) 98 Mass. 85.

¹⁹*Walsh v. Boston and Maine Railroad*, (1909) 201 Mass. 527, 88 N. E. 12. Earlier expressions of the idea of interstate cooperation are to be found in *Walsh v. New York and New England R. R. Co.*, (1894) 160 Mass. 571, 572, 36 N. E. 584, in which an action was brought in Massachusetts to recover for injuries suffered in Connecticut. According to the Massachusetts rule, the particular injury would have been considered as caused by the negligence of the plaintiff's fellow servants. By Connecticut law, the injury would be considered as due to the negligence of the defendant. In allowing the Connecticut rule to be applied, Holmes, J. said: "But, however this may be, we are of opinion that as between the states of the union when a transitory cause of action has vested in one under the common law as there understood and administered, the mere existence of a

an action would lie on the English Lord Campbell's Act, the earlier cases were not distinguished on the ground that here a foreign country was involved, and recovery was allowed.²⁰ Thus in Massachusetts a departure from the English tort rule²¹ was influenced in some measure by a consideration of the relations between the American states. Yet, the modified rule thus developed was not applied exclusively to interstate situations but was extended to international transactions.

In dealing with the public policy concept, other courts besides those of New York and Massachusetts have paid at least lip service to the ideal of interstate cooperation.²² Moreover, the *Loucks Case* has had some influence in at least two jurisdictions, namely, Minnesota²³ and Vermont.²⁴ But, on the other hand, numerous

slight variance of view in the forum resorted to not amounting to a fundamental difference of policy should not prevent an enforcement of the obligation admitted to have arisen by the law which governed the conduct of the parties."

In 1900, a resident of Ireland sued under the Massachusetts wrongful death statute for an injury occurring in Massachusetts. The statute was construed to permit her to recover. Holmes, J. commented, *Mulhall v. Fallon*, (1900) 176 Mass. 266, 57 N. E. 386, 388,

"Our different relations to our neighbors politically and territorially is a sufficient ground for a more liberal rule, at least as to inhabitants of the United States. Whether if the statute were of a different kind, we could make a distinction between a mother living just across the boundary line between Massachusetts and Rhode Island, and one living in Ireland need not be considered now."

²⁰*Hansen v. Leyland Co.*, (1916) 223 Mass. 438, 111 N. E. 907.

²¹In *Phillips v. Eyre*, (1870) 6 Q. B. 1, 10 B. & S. 1004, 40 L. J. Q. B. 28, 22 L. T. 869, it was decided that when an action is brought in England on a tort committed in a foreign country, "The wrong must be of such a character that it would have been actionable if committed in England."

²²In *Bond v. Hume*, (1917) 243 U. S. 15, 22, 37 Sup. Ct. 366, 61 L. Ed. 565, the question was whether the federal court sitting in Texas would enforce a contract made in Texas relating to futures on the New York Stock Exchange. Justice White said: "Courts of one sovereignty will not refuse to give effect to the principle of comity by declining to enforce contracts which are valid under the laws of another sovereignty unless constrained to do so by clear convictions of the existence of the conditions [public policy] justifying that course. . . . It is certain that these principles which govern as to countries foreign to each other apply with greater force to the relations of the several states to each other, since the obligations of the constitution which bind them all in a common orbit of national unity impose of necessity restrictions which otherwise would not obtain and exact a greater degree of respect for each other than otherwise by the principles of comity would be expected." See also the statement of Taney, J. in *Bank of Augusta v. Earle*, (1839) 13 Pet. (U.S.) 519, 584, 10 L. Ed. 274. "The intimate union of these states as members of the same great political family, the deep and vital interests which bind them so closely together should lead us in the absence of proof to the contrary to presume a greater degree of comity and friendship and kindness towards one another than we should be authorized to presume between foreign nations."

²³The *Loucks Case* was cited in *Chibbuck v. Holloway*, (1931) 182 Minn. 225, 234 N. W. 314, 316, in which an action was brought on a Wis-

American courts have not been hesitant to apply the public policy doctrine to the laws of sister states.²⁵ The Arizona²⁶ and Wyoming²⁷ courts, for example, have analyzed the problems of chattels mortgaged in other states in terms of comity and reciprocity.

However, most American courts in applying to the laws of foreign countries the concept of public policy do not seem to impose a standard in any degree more rigid than that applied to the laws of sister states. The problem was interestingly raised in the Arizona case of *Veytia v. Alvarez*.²⁸ The question was whether

consin Lord Campbell's Act. Wilson, C. J. said: "Under the Wisconsin statute, plaintiff has a vested right and the uniform interstate enforcement of vested rights is desirable." However, earlier Minnesota cases adopting a similar liberal attitude towards the wrongful death statutes of sister states did not distinguish interstate from international problems. See *Herrick v. R. R. Co.*, (1883) 31 Minn. 11, 16 N. W. 413; *Powell v. Great Northern R. R. Co.*, (1907) 102 Minn. 448, 113 N. W. 1017.

²⁴The Vermont court in *Wellman v. Mead*, (1919) 93 Vt. 322, 326, 332, 107 Atl. 396, 398, 401, in deciding that a Massachusetts wrongful death statute was not a penal law nor against Vermont public policy, said: "The evident tendency of modern decisions is towards a broader comity in the enforcement of rights created by the legislation of sister states. . . . As said in *Loucks v. Standard Oil Company*, the fundamental public policy at least among the states of the union is that rights lawfully vested shall be everywhere maintained. The decisions manifest a growing conviction that only exceptional circumstances should lead one of the states to refuse to enforce a right acquired in another."

²⁵*Flagg v. Baldwin*, (1884) 38 N. J. Eq. 219 (New York gambling contract); *Pope v. Hanke*, (1899) 155 Ill. 617, 40 N. E. 839 (gambling contract); *Union Trust Co. v. Grossman*, (1918) 245 U. S. 412, 38 Sup. Ct. 147, 62 L. Ed. 368 (contract made by married woman); *Armstrong v. Best*, (1893) 112 N. C. 59, 17 S. E. 14 (married woman's contract); *Fox v. Postal Tel. Co.*, (1909) 138 Wis. 648, 120 N. W. 399 (limitation of liability).

²⁶*Forgan v. Bainbridge*, (1928) 34 Ariz. 408, 414, 274 Pac. 155, 158, Lockwood, J. says "And so far as the rule of comity is concerned, except as otherwise qualified by the federal constitution, the states of the Union are considered as foreign nations, and separate sovereignties."

²⁷*Union Securities Co. v. Adams*, (1925) 33 Wyo. 45, 49, 57, 236 Pac. 513, 514, 517. Wyoming refused to protect the mortgagee of a chattel mortgaged in Texas since Texas would not protect a Wyoming mortgagee. Blume, J. said:

"It is fundamental that the laws of Texas have ipso proprio vigore no extraterritorial force. So far as their effect is concerned every other state must be regarded as separate sovereignty to the same extent as though it were a foreign nation." He continues, "Living in a union of forty-eight states, obedient to the same flag, speaking the same language, having largely the same customs, and following the same pursuits, it should be the policy of every state to extend rather than to limit the doctrine of comity. But, we must necessarily pause and hesitate to apply it in a case like that at bar when we can find no possible justification for it and when the decision necessarily resulting in an injury to a citizen of this state would find no basis in any sound principle of law."

It seems that it might be difficult to find circumstances under which Blume, J. would see fit to extend the doctrine of comity.

²⁸(1926) 30 Ariz. 316, 323, 329, 247 Pac. 117, 120, 121.

Arizona would enforce an action against an Arizona resident for the purchase of liquor in Mexico. The defendant's counsel argued "public policy," and attempted to distinguish some of his opponent's cases "on the ground that the motives of comity among the states are stronger and more compelling than those among the nations." Jones, J. said:

"But in the cases cited above [The *Loucks Case* was among them!] no point or mention is made thereof. . . . It may well be that the ties of comity among the states are or ought to be stronger than those between nations . . . but none will argue that we should indulge in a spirit of captiousness against our neighboring republic. With it and its people, our government and our people are in constant governmental and commercial contact. . . . Citizens of the one country own property and transact business in the other and the course of trade is growing. It should be encouraged and fostered for our mutual welfare. Adverse decisions on the ground of policy will breed suspicion of discrimination against us. Elusive notions of public policy, an unruly horse at best, should not be an obstacle to just claims."

Next to be considered is the domicile concept, prominent in the Anglo-American law of conflicts. One obvious result of the importance of interstate conflicts in the United States has been to make inconvenient in the great majority of American conflicts cases the use of the nationality device, popular on the continent.²⁹ As between the states of a federated nation, the nationality of a person has little significance. But even in regard to international conflicts, no use has been made by American courts of the nationality test. Certain European federated states such as Switzerland, Poland and Jugo-Slavia have likewise recognized the expediency of using the domicile concept in interstate conflicts. However, they have tended to continue to apply in appropriate circumstances the national law of a citizen of a foreign country

²⁹See Beale's discussion in his *Treatise on the Conflict of Laws* 71-74; Wharton, *Treatise on the Conflict of Law*, sec. 32. Note Bar's statement in his *Private International Law* 205, "Domicile too may in cases in which different legal systems are recognized within the territory of the same state be taken as the convenient rule for determining which of these systems is applicable. That will be so when the population enjoys complete freedom of movement and of settlement all over the territory, and laws of local citizenship enjoy accordingly a comparatively trifling importance. The same rule may indeed apply to the case of a confederation of states; if for instance the legislation of the German Empire should hereafter adopt the principle of nationality to regulate its relations with extra-German states and legal systems, it might still be desirable to allow the principle of domicile to determine the personal law of individual citizens of the empire in the several federated states belonging to it rather than the principle of birth or origin."

rather than the laws of his last domicile.³⁰ The use of domicile in England and the United States has been attended with a certain amount of confusion between it and the ideas associated with allegiance and nationality. This was reflected in the English judicial opinions by a stress on the domicile of origin,³¹ and by a hesitancy to find a change of domicile from England to a foreign country, especially to one in which there existed what the white man was pleased to call an inferior civilization.³² The frequency with which Americans travelled from state to state influenced the American judges to depart from the English rule relating to the revival of the domicile of origin.³³ Judge Faville of the Iowa

³⁰For the Swiss situation under the law of 1891, see Lainé, *Etude Concernant la loi Fédérale Suisse du 25 Juin 1891*, in (1893-97) 23 *Bulletin de Societe Législation Comparée* 128, 209. The conflicts problem was analyzed in terms of (1) Swiss nationals residing in a different canton than that of their origin, (2) Swiss residing in foreign countries, (3) citizens of foreign countries residing in Switzerland. While the domicile concept was applied to all three classes, under certain circumstances the national law was applied to classes 2 and 3. The national law of a Swiss was to be found by reference to the law of the canton of his birth. Later legislation has unified the internal legal organization of Switzerland to a large extent.

The Polish Legislature on August 2, 1926, passed two distinct laws regulating respectively (1) international conflicts and (2) conflicts among the six provinces of Poland, Niboyet, *Manuel de Droit International Privé* 15-21. While nationality was to be a basic factor in the field of international conflicts, in the matter of competing provincial laws domicile was to be applied. See Eliesco, *Essai sur les Conflits de lois dans l'espace sans Conflits de souveraineté* 101.

In the Juglo-Slavian statute of 1928 relating to conflicts problems of bills and notes, it was decreed that "la capacité d'une personne de s'obliger par lettre de change est déterminée par loi de son pays." Sec. 94. This provision applied only to subjects of foreign countries. As to citizens of Jugo-Slavia which is a federal state, "la capacité juridique sera jugée d'après le domicile du debiteur au moment ou il est obligé par lettre de change." Peritch, "Les droits international et interprovincial dans les nouvelles lois yougoslaves sur la lettre de change et sur le chèque du 29 November 1928, 1 *Annuaire de l'Association Yougoslave du Droit Int.* 177."

By the Spanish Code of 1893, in international conflicts the national law of the individual was important in many matters. Corresponding problems arising among the provinces of Spain were to be solved in terms of the law of the place of birth of the individual. Laine, *Etude Concernant la Loi Fédérale Suisse du 25 Juin 1891*, 23 *Bulletin Societe de Législation Comparée* 179.

³¹*Udny v. Udny*, (1869) L. R. 1 Sc. & Div. 441.

³²On a domicile in the far east see *In re Tootal's Trusts*, (1883) 23 Ch. D. 532, 52 L. J. Ch. 664, 48 L. T. 816, 31 W. R. 653; overruled by *Casdagli v. Casdagli*, [1919] A. C. 145, 88 L. J. P. 49, 120 L. T. 52, 35 T. L. R. 30.

On the English attitude towards a change of domicile to a foreign country, see *Lord v. Colvin*, (1859) 4 Drew. 366, 422, 28 L. J. Ch. 361, 32 L. T. O. S. 377, in which Kindersley, J. said: "The court would more readily decide that a Scotchman had acquired a domicile in England than that he had acquired a domicile in France;" *Moorhouse v. Lord*, (1863) 10 H. L. Cas. 272, 273, 283, 32 L. J. Ch. 295, 1 New Rep. 555; *Huntley, Marchioness v. Gaskell*, [1906] A. C. 56, 75 L. J. P. C. 1, 94 L. T. 33.

³³*First National Bank of New Haven v. Balcom*, (1868) 35 Conn. 351.

court, after pointing out that the American conditions of travel made the doctrine of reverter of the domicile of origin inapplicable to a change from state to state, did not hesitate to apply a result reached by such reasoning to a change from an American state to a foreign country.³⁴ Here, again, a rule arising out of interstate conditions is applied to an international situation. However, as far as the evidence necessary to show a change of domicile is concerned, Vann, J. of the New York court of appeals has stated:

"Less evidence is required to establish a change of domicile from one state to another than from one nation to another."³⁵ This statement appears to reflect the New York viewpoint and perhaps that of some other jurisdictions.³⁶

In the heart of conflicts, the choice of law problem, little can be found in American judicial decisions to indicate a distinction between interstate and international conflicts.³⁷ When a court has

358; Succession of Schuyler B. Steers, (1895) 47 La. Ann. 1551, 1554, 18 So. 503. In the latter case, the court said, "Here the customs, the habits of the people, their ceaseless energies, their continuous change from locality to locality, the sudden and dense population of new places, the desertion and abandonment of old ones, all show that the people are migratory and are not much influenced by birth, locality or the local history of families. Hence we conclude that it will require the same facts only to show a change of domicile from the domicile of birth that it would require to show a change from one's selected domicile to another. The revival of the intention to return to the domicile of birth does not apply when the domicile of origin and of selection are both domestic."

See Minor, Conflict of Laws, sec. 66.

³⁴In re Jones Estate, (1921) 192 Iowa 78, 182 N. W. 227.

³⁵Matter of Newcomb, (1908) 192 N. Y. 238, 250, 84 N. E. 950. The case involved a possible change of domicile from New York to Louisiana. Vann, J.'s statement was quoted with approval by McLaughlin, J. in United States Trust Co. v. Hart, (1912) 150 App. Div. 413, 417, 135 N. Y. S. 81, who in failing to find a French domicile concluded that the deceased "never renounced his citizenship nor did he take any step to become a citizen of France or to enjoy civil rights in that country by complying with section 13 of the Code Napoleon." See also Matter of Blumenthal, (1917) 101 Misc. Rep. 83, 88, 167 N. Y. S. 252; in Cruger v. Phelps, (1897) 21 Misc. Rep. 252, 262, 47 N. Y. S. 61, in refusing to find that a domicile had been changed to France, Chase, J. said, "In cases of succession, it requires plain and certain evidence showing a fixed and definite purpose to establish that a person had become a foreigner to his native land;" see also Matter of James, (1917) 221 N. Y. 242, 256, 116 N. E. 1010.

³⁶See White v. Brown, (C.C. Pa. 1848) 1 Wall. Jr. 217, Fed. Cas. No. 17,538, where the court was slow to find a change of domicile to a foreign country.

³⁷Any final decision in regard to the importance of the introduction of an international element in a choice of law case will have to await a consideration of practically every American choice of law case involving a contract in a foreign country. While it seems clear from a limited perusal of the digest that the introduction of the international contract will not give rise to discussion in the opinion, it may well be that a careful analysis of the results reached in these cases will reveal some unconscious reaction on the

been faced with the problem of deciding whether the law of the place where the last act necessary to make a contract was done or whether the law of the place of performance should determine a particular question relating to a contract, the fact that one contract was in a foreign country while another was in a sister state has had no apparent effect on the solution.³⁸

The same conclusion must be reached in considering the attitude of the courts in regard to giving effect to the expressed intention of the parties in consensual transactions.³⁹ Nor has the

judge's part to the crossing of a national boundary line. Fascinating vistas of research in the history of a particular choice of law rule are opened up. For example, take the rule that the law of the place where the last act necessary to make a contract was done determines the capacity to make a contract. Who first evolved the rule and in what connection? What are the reasons for the rule? Are any of them tied up with the economic and political conditions that arise from the relations of several confederated states? Or are any of them connected with the economic barriers, the psychological reactions, the philosophy of nationalism and national states has built up? Was this rule first applied in American cases in an interstate or an international transaction? From the point of view of results reached rather than the language of the courts, has the introduction of a contract of a foreign country been important?

It would require a similar consideration of every choice of law rule before satisfactory conclusions could be drawn. The most that can be said is that there is yet to be discovered in the American choice of law cases any indication of a way in which the international element has been important. This is far from saying that upon complete investigation no such indication will be found.

³⁸The spirit of *Pendleton, J.* seems to pervade the American decisions. He said in *Varder v. Arrel*, (1796) 2 Wash. (Va.) 283, 298, "The laws of a foreign country where the contract was made must govern. The same principle applies though with no greater force to the different states of America for though they form a confederated government, yet the several states retain their individual sovereignties and with respect to their municipal regulation are to each other foreign." The case involved a debt contracted in Pennsylvania which it was alleged had been paid by the offer of Continental currency.

Note the indication in *Milliken v. Pratt*, (1878) 125 Mass. 374, that the circumstance that Americans travel from state to state so extensively was a factor influencing the court in applying the law of the place of contracting to the question of capacity to contract. Of course, no distinction has been drawn where the contracts were divided between one of the United States and a foreign country.

Cf. *O'Regan v. Cunard S. S. Co.*, (1894) 160 Mass. 356, 35 N. E. 1070, in which *Milliken v. Pratt* was cited. A ticket agreement was made in Massachusetts, but a new contract was later made in Ireland in regard to a passage to Boston. Irish law was held to determine the validity of a limitation of liability clause in the contract. See also *Millenthal v. Mascagni*, (1903) 183 Mass. 19, 66 N. E. 424.

³⁹Where attention is paid to the intention of the parties in determining the law that is to govern the validity of a contract, it is conceivable that an American judge might more easily find an intention to be governed by the law of a sister state than by the law of a foreign country. Compare the language of *Gray, J.* in *Liverpool and G. W. Steam Co. v. Phenix Insurance Co.*, (1889) 129 U. S. 397, 461, 9 Sup. Ct. 469, 479, 32 L. Ed. 788, "In

approach been different where the subject of judicial consideration has been the various possible contacts presented in questions involving real and personal property.⁴⁰

It is interesting to note that in Switzerland and Alsace Lorraine a distinction has been drawn between international and interstate conflicts in regard to the succession to immoveables. Thus if the domicile contact and the location of the land contact are divided between France and Alsace or Lorraine, the law of the domicile governs the succession of both the immoveable and the moveable property. But if the domicile be in a foreign country, the law of the situs of the immoveables will govern as to them.⁴¹

this case, the contract was made in this country, between parties one residing and the other doing business here; and the law of England is a foreign law which the American shipper is not presumed to know." Whether Gray, J. was distinguishing the interstate situation is doubtful, and no suggestions on the point have been found in other opinions.

Note in the French law of 1921 applicable to conflicts between French and Alsace-Lorraine Law (article 10), provisions enabling those forming contracts in Alsace to submit the contract to French law by a simple declaration. Niboyet et Goule, *Recueil de Textes Usuels de Droit Int.* Similar provision was made in the Spanish Code of 1889 in regard to interprovincial conflicts. The individual could in many circumstances indicate a preference that the common law of Spain govern. Eliesco, *Essai sur les Conflits de Lois dans l'Éspace sans Conflits de souveraineté* 99.

⁴⁰Note the statement of the Florida court in *Wallace v. Wallace*, (1895) 35 Fla. 49, 16 So. 783, "So far as the law of descent [to Florida land] is concerned the *lex locus rei sitae* must prevail and the different states of the union are foreign countries to each other." Consider the New Jersey cases of *Caruso v. Caruso*, (N.J. 1930) 198 Atl. 882 and *Harrall v. Harrall*, (1884) 39 N. J. Eq. 279 where the New Jersey courts showed no hesitation in applying to personal property located in New Jersey the distribution law of the domicile, a foreign country.

In *National Cash Register Co. v. Lovett*, (1906) 31 Nova Scotia 54 the question was whether compliance with a Nova Scotia registry act was a condition precedent to the protection of the mortgagee's interest in a chattel mortgage. In deciding the point, the court found it unnecessary to determine whether the law of the place of contracting, Ohio (an international contact), or the law of the place where the goods were received, Ontario (an interprovincial contact) should govern the sale. Compare *Ballard v. Winter*, (1894) 39 Conn. 177, 179, in which a chattel had been mortgaged in Massachusetts and removed to Connecticut. The court said: "It would certainly be very inconvenient if such a mortgage fairly made in Massachusetts should be held invalid in Connecticut in respect to moveable property which may be daily passing to and fro along the dividing line between the states."

In the workmen's compensation situation, no special consideration seems to have been given to the international element. See for example *Cameron v. Ellis Construction Co.*, (1930) 252 N. Y. 394, 169 N. E. 622; *Saunders's Case*, (1922) 126 Me. 144, 136 Atl. 722, in which the Maine workmen's compensation law was applied to a workman working in New Brunswick for a Maine corporation.

⁴¹On the Alsace-French situation see Audinet, *La Solution des conflits entre la loi française et la loi locale d'Alsace Lorraine en matière du droit privé*, (1921) 48 *Clunet* 801. The 1921 law expressly says, "Les règles du

This legislative solution suggests a possible modification of the dominant influence the *situs* concept has acquired in this country in regard to conflict problems relating to real property. Where statutes have been passed in the American states that permit the form of a deed or will conveying land within the state to be governed by the law of the place of execution,⁴² in a few instances such a privilege has been limited to documents executed in another state of the United States.

In considering a possible distinction between interstate and international transactions in the United States, one must not disregard constitutional limitations. The presence of the full faith and credit clause of the federal constitution which is applicable only to the "public Acts, records, and judicial proceedings" of sister states⁴³ indicates a possible differentiation in constitutional law between the interstate and the international situation. Such has been the effect as far as the recognition of judgments is concerned. The full faith and credit clause prevents a state from reexamining a judgment of a sister state on the merits, and from

conflits établies par la présente loi s'appliqueraient exclusivement aux conflits qui s'élèvent entre la loi française et la loi locale." For a text of the law see, Niboyet et Goule, *Recueil de Textes Usuels de Droit Int.* See also Niboyet, *Manuel de Droit Int.* Prive 19.

By the Swiss Code of 1891 if a Swiss died domiciled in a Swiss canton, the law of that canton was to determine the succession to immovables situated anywhere in Switzerland. However, if a Swiss died domiciled in a foreign country, the law of his canton of birth was to determine the succession to immovables located in Switzerland. Lainé, *Etude Concernant la Loi Fédérale Suisse du 25 Juin 1891*, 23 *Bulletin Société de Legislation Comparée* 128, 175.

⁴²See the states listed by Lorenzen in *Validity of Wills, Deeds, Contracts as regards form in the Conflict of Laws*, (1911) 20 *Yale L. J.* 433. Several of the states which drew the distinction at the time the article was written have since removed the limitation, e.g., Rhode Island (wills), New York (formerly wills executed in state of United States, Canada or Great Britain, and Ireland.) However, the following provision seems to be still in effect in Arkansas, *Digest of Statutes, Crawford and Moses*, sec. 10539, "Citizens of any of the United States or Territories thereof owning real or personal property in this state may devise and bequeath the same by last will and testament executed and proved according to the laws of the state or territory in which the will may be made."

As to deeds, note section 509 of the *Alaska Compiled Laws, 1913*, If any deed shall be executed in any state, territory or district of the United States such deed may be executed according to the laws of such State, territory, or district.

⁴³United States Constitution, art. IV, sec. 1. Cf. *Huntington v. Attrill*, (1892) 146 U. S. 657, 13 Sup. Ct. 224, 36 L. Ed. 1123, in which the full faith and credit clause was interpreted in the light of the long established conflict rule that "The courts of no country execute the penal laws of another." Although Gray, J. in this case labelled this rule as a "maxim of international law," it is to be noted that no distinction is drawn in the application of this doctrine between interstate and international transactions.

refusing to aid in its enforcement because the action on which it was brought was contrary to the public policy of the second state.⁴⁴ While no such limitation restrains a state in considering a judgment rendered by the courts of a foreign country,⁴⁵ nevertheless some jurisdictions in the United States such as New York do not take advantage of their constitutional privilege of treating the judgment of a court of a foreign country in a way different from the judgment of a court of a sister state.⁴⁶

However, when a choice of law problem is posited which involves the applicability of the statutes or common law of another jurisdiction, the exact scope of the full faith and credit clause has been left undefined,⁴⁷ and the due process clause, applicable to both interstate and international transactions, has been utilized by the Supreme Court as the restraining device. This is not the place to deal with the fascinating problem elsewhere fully discussed⁴⁸ of the extent conflict of laws has become a branch of constitutional law. For present purposes, it is sufficient to note that there has been as yet no discussion in the Supreme Court cases of the distinction between interstate and international transactions, nor is there any clear indication that as to choice of law the full faith and credit clause imposes a check on the states in any way more rigid than that of due process.⁴⁹

⁴⁴Hanley v. Donoghue, (1885) 116 U. S. 1, 4, 6 Sup. Ct. 242, 244, 29 L. Ed. 535; Faunteroy v. Lum, (1908) 210 U. S. 230, 28 Sup. Ct. 641, 52 L. Ed. 1039; Goodrich, Handbook on the Conflict of Laws 451-477.

⁴⁵Consider the reciprocity doctrine of Hilton v. Guyot, (1895) 159 U. S. 113, 16 Sup. Ct. 139, 40 L. Ed. 95; McFadden, Reciprocity as a Condition in the Enforcement of Foreign Judgments; Banco Minero v. Ross, (1915) 106 Tex. 523, 172 S. W. 711 (Texas refused to recognize a Mexican judgment on the ground that the Mexican procedure did not give a full and a fair trial). Goodrich points out distinctions in the treatment of judgments of sister states from judgments of foreign countries in the matter of (1) fraud, (2) public policy, (3) merger of previous cause of action. On merger, see Eastern Township Bank v. Beebe, (1880) 53 Vt. 177.

⁴⁶Johnston v. Compagnie Gen. Transatlantique, (1926) 242 N. Y. 376, 152 N. E. 120; (1926) 26 Col. L. Rev. 892; Cowans v. Ticonderoga Power Co., (1927) 219 App. Div. 120, 219 N. Y. S. 284.

⁴⁷Compare the attitude of Judge Beach in regard to the full faith and credit clause, (1918) 27 Yale L. J. 656.

⁴⁸Langmaid, The Full Faith and Credit Required for Public Acts, (1929) 24 Ill. L. Rev. 383; Ross, Has the Conflict of Laws Become a Branch of Constitutional Law? (1931) 15 MINNESOTA LAW REVIEW 161.

⁴⁹See Dodd, The Power of the Supreme Court to Review States Decisions in the Field of Conflict of Laws, (1926) 39 Harv. L. Rev. 533; note (1931) 40 Yale L. J. 291; consider New York Life Insurance Co. v. Dodge, (1918) 246 U. S. 357, 38 Sup. Ct. 337, 62 L. Ed. 772; Mutual Life Insurance Co. v. Liebong, (1922) 259 U. S. 209, 42 Sup. Ct. 467, 66 L. Ed. 900; Aetna Life Insurance Co. v. Dunken, (1924) 266 U. S. 389, 45 Sup. Ct. 129, 69

In the matter of proof of foreign law, some attempt has been made to differentiate between the laws of sister states and the laws of foreign countries. Whether there will be applied a presumption that the foreign law is like that of the forum is decided as a rule not in terms of sister state and foreign country but from the standpoint of whether the basic legal system of the other jurisdiction is a product of the common or civil law.⁵⁰ However, rules in regard to the authentication of foreign law have been relaxed in regard to the laws of sister states,⁵¹ and statutes have been passed permitting the forum to take judicial notice of the laws of sister states.⁵²

In contrast to the Anglo-American literature of conflicts, some discussion of the desirability of differentiating international and interstate transactions is to be found on the continent. In Germany, Savigny⁵³ and Bar,⁵⁴ and in Italy, de Meilli⁵⁵ raised the

L. Ed. 342; *Home Insurance Company v. Dick*, (1930) 281 U. S. 397, 50 Sup. Ct. 338, 74 L. Ed. 926.

⁵⁰See A. M. Kales, (1906) 19 Harv. L. Rev. 401; (1924) 22 Mich. L. Rev. 734.

Cf. *Owen v. Boyle*, (1836) 15 Me. 147 where the Maine court refused to presume that the English common law existed in New Brunswick.

⁵¹See *Emery v. Berry*, (1854) 28 N. H. 473, 487; "While testimonial evidence should be excluded. . . we think we ought to hold that a printed volume of the statutes of a sister state purporting upon its face to have been printed by its authority and to contain the laws of the state should be admitted as prima facie evidence to show what these laws are. Such a course seems called for by the great convenience and saving of expense to the parties, and by the confidential relations which exist between the states;" In *Inhabitants of Raynam v. Inhabitants of Canton*, (1825) 20 Mass. 293, 297, it was said: "In England it does not seem to be settled that printed books of foreign law are to be received as evidence, and we do not mean to say that the law of any country merely foreign may be so proved. But the connection, intercourse, and constitutional ties which bind together the several states require that this species of evidence shall be sufficient until contradicted." For statutory regulation of the admission of copies of foreign statutes in evidence, see 3 Wigmore, Evidence, sec. 1684, note 15. Several of the statutes apply the liberal rule only to the law of sister states or United States territories, e. g., Connecticut, Delaware, Maryland, Rhode Island, Vermont, Indiana.

⁵²See 5 Wigmore Evidence, sec. 2573. The Arkansas statute for example provides, "The courts of this state shall take judicial notice of the laws of other states," Digest of Statutes, Crawford and Moses, sec. 4110. Manitoba judicially notices the laws of any part of the United States, as well as Canada.

⁵³Savigny, *A Treatise on the Conflict of Laws*, Guthrie Translation. He says, page 27, "In this way we come to apply to the conflict of territorial laws of independent states substantially the same principles which govern the collision of particular laws in the same state."

⁵⁴International Law, 1-12. Bar outlines the attitude taken by earlier writers, considers the reasons advanced for drawing a distinction, points out that no differentiation is observed in the Russian or German confederation, and concludes that international conflicts are decided in accordance with the nature of the subject of conflicts in general.

issue, but decided adversely to the drawing of a distinction. In France, the acquisition of colonies in North Africa and especially the re-annexation of Alsace-Lorraine created an interest in the problem since conflicts arose between French law and the law of Alsace and the laws of the tribes in Algeria. Arminjon,⁵⁶ Bartin,⁵⁷ Niboyet⁵⁸ and Eliesco⁵⁹ attempted to draw some distinction between the two sorts of conflicts. The exact points of difference remain rather vague. As Arminjon says:⁶⁰

"The works which do not pass over these difficulties in silence limit themselves, some to denying the existence of any differences, others to observing that they [interprovincial conflicts] are less numerous and less difficult to resolve because of the existence of the sovereign authority and of common institutions to which the inhabitants of the divided territories are submitted."

However, it has been suggested that interstate conflicts will be less frequent than international conflicts because of the frequency with which the rules of law of the particular states will correspond. This point is illustrated by the movement for uniform state laws in the United States.⁶¹ Again, it is said that in an interstate transaction the forum will be more inclined to give effect to the law of another state than it would to the law of a

⁵⁶International Civil and Commercial Law 46-50. Meili points out that in interprovincial conflicts nationality has a limited application, and that the existence of a central government will have some influence in producing cooperation among the constituent states. He discusses the Swiss situation.

⁵⁷Arminjon, *Precis de Droit International Privé* 115 ff.

⁵⁸Bartin, *Principes de Droit International Privé selon la loi et la jurisprudence Française* 13-28. He discusses the Alsace and the Algerian situations.

⁵⁹Niboyet, *Manuel de Droit International Privé* 15-21.

⁶⁰Supra note 11. He considers especially the conflicts of annexation. However, as an introduction to his particular subject, he surveys the field of interprovincial conflicts in general. He outlines the attitudes earlier writers have taken on the subject, and considers how the situation has been worked out in Poland, Switzerland, Alsace, and Algeria. He strongly believes that solutions of interprovincial, and mother-country-colonial conflicts should not be applied in toto to problems of international conflicts. As to specific points of difference between the international and the interstate situation, he thinks that in the latter, judgments will be more completely recognized, domicile will be more generally used than nationality, the law of the other state will be better known by the judge, rights vested will be more readily recognized, and there will be no room for discrimination in favor of the citizens of the forum province in preference to citizens of another province.

⁶¹Arminjon, *Precis de Droit International Privé* 115.

⁶²Pillet, *Principes de Droit International Privé* 45 ff. indicated that he thought that in a confederated state there was a tendency towards uniformity. On the American uniform law movement, see Kuhn, *La Conception du Droit Int. Privé d'après la doctrine et la pratique aux États-Unis* 12.

foreign country in an international transaction.⁶² This result is supposed to follow from the sentimental ties that bind together a confederated nation. It seems easier to state the reasons for believing that this result would follow than to give specific instances where it has happened. Several writers have queried the applicability to interstate conflicts⁶³ of the "public order" doctrine which resembles the Anglo-American public policy. Eliesco, whose treatment of the problem is the most complete, sharply distinguishes between (1) conflicts such as those between the states of the United States, and (2) those between France and Alsace, and a mother country and a colony, situations in which there is a constitutional power in a central legislature to prescribe the conflicts rule, or to require uniformity of law. To Eliesco,⁶⁴ the public order concept is applicable in interprovincial conflicts only to the former situation which he labels "conflicts of laws with conflicts of sovereignty."⁶⁵ It should be kept in mind that most of the discussion in continental literature deals with interprovincial conflicts in which the states are not related to the central government in the same way the states of the United States are to the federal government. Stress is always being put on the power of the central government to smooth over difficulties.

Thus, it can be seen that it is in an exceptional case that the crossing of an international boundary line has given rise to dis-

⁶²See Meili, *International Civil and Commercial Law*; Niboyet, *Manuel de Droit International Privé*.

⁶³Waechter, Pillet, *supra* note 16. Eliesco, *Essai sur les Conflits de Lois dans l'espace sans Conflits de souveraineté*.

⁶⁴Niboyet similarly sought to separate conflicts into those which were and those which were not between "sovereignities." He said, *Manuel de Droit International Privé* 16, "Un état possède la forme fédérale comme les Etats-Unis de sorte que chaque Etat membre de l'état fédéral conserve sa propre législation avec un autonomie presque complète. On est en présence d'un conflit interprovincial entre les lois des Etats particuliers qui ressemble de bien près à un conflit international."

⁶⁵As a producer of confusion in legal thinking, the term "sovereignty" is only to be ranked with "natural justice" and "jurisdiction." Whatever its feudal origins, the term has long been a part of conflict of laws learning. The story of the influence of the "sovereignty" concept is a fascinating chapter in legal history which is yet to be told. All that need be said here is that the "sovereignty" of conflicts of law is a product of problems of interstate relations of the Middle Ages, and that it is difficult to distinguish its meaning from the ideas connected with the concept "territoriality." Its importance in public international law is a later development. Thus, the use of the word hinders rather than helps any solution of the problem of whether a distinction should be drawn between interstate and international transactions in conflict of laws.

tinctive treatment in conflict of laws.⁶⁶ This result seems a fortunate one if it is deemed desirable that the courts emancipate themselves in conflict problems from the yoke of conceptualism and adopt the method suggested by Lorenzen⁶⁷ of determining a particular conflict rule in terms of the effect on the individual and social interests of the adoption of the rule in question. In this process, the consideration of the international element might well be a factor. The external manifestations of nationalism, tariff barriers, immigration difficulties, as well as the emotional effect on the individual of the philosophy of nationalism are as much a part of our environment as the increasing flow of international trade. Perhaps, for instance, in considering the chattel mortgage and conditional sales problems, the courts are balancing the interest of the mortgagees and the innocent purchaser in the light of the freedom of commerce to be found within the United States. If only foreign countries were involved, the mortgagees might need less protection. On the other hand, if the foreign country be a neighbor, Canada or Mexico, the risk of loss to the mortgagee by a removal out of the state is only slightly less than the risk of removal to a sister state. In the great majority of situations, it does not seem that there will be justification for introducing the complexity of reaching a different result in an international transaction than that arrived at in the interstate situation. As a rule, the effects of the international organization of society do not appear to have any considerable influence in determining the expediency of adopting a particular conflict rule. But, the possibility of proving the importance of the international element in a particular case should be kept in mind.

The interstate-international distinction seems to have some utility as an opening wedge to be used in arriving at results to be eventually applied in both international and interstate transac-

⁶⁶The question arises whether the penal law doctrine is as applicable among confederated states as it is among nations. Bartolus, Beale Translation, page 48, suggests that among confederated cities, a delinquent in one may be punished in another. Eliesco mentions a provision of Czecko-Slovakian law by which a criminal prosecution may be brought in another province than that in which the offense occurred. *Essai sur les Conflits de Lois dans l'espace sans Conflits de souveraineté* 100. The forum is to apply the law of the place where the act occurred. There is a central legislative body in Czecko-Slovakia with much fuller powers to legislate in regard to provincial matters than the United States Congress has in regard to state matters.

⁶⁷Lorenzen, *Territoriality, Public Policy, and the Conflict of Laws*, (1924) 33 *Yale L. J.* 736.

tions. If it be thought desirable to restrict the applicability of the public policy doctrine or to limit to some extent the power of the situs over anything remotely connected with land, there is indication that it might be easier to bring about the modification in the interstate situation. Once the change is brought about there, the American cases show that the altered rule would have an excellent chance of being applied without comment to the international transaction.

However, the most interesting aspect of the whole problem is that, if the subject be considered historically, the result reached has not been as Judge Thompson saw it, a matter of treating a sister state with no more confidence than that shown a foreign country. It is more accurate to say that in a world of nationalism and tariff barriers, there is afforded the inspiring spectacle of foreign countries being granted all the privileges of sister states in a branch of law that has grown up with the relations of confederated states in view.