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BOOK REVIEWS

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

What is proposed in this short study is a new approach to international law. This approach would eliminate the stress placed on the state and nation factor by traditional international law in favor of a broader conception based on the multiplicity of rules emanating from both private and public sources which regulate the day to day social, economic, and political relationships of the "world community." "Transnational Law," the term employed to describe this approach, is defined by the author as "all law which regulates actions and events that transcend national frontiers." Transnational situations thus "may involve corporations, states, organizations of states or other groups." The need for such an approach, as the author sees it, arises from the inability of traditional international law to cope with the complex and interdependent nature of modern international relations. "The use of transnational law," the author states, "would supply a larger storehouse of rules on which to draw, and it would be unnecessary to worry whether public or private law applies in certain cases."

In the first chapter, the author by a series of "dramas" parallels human problems at different levels of human society — family, corporate, interregional, and international. By pointing out the common elements in these "dramas" he suggests that since problems at the international level are after all human problems, there is no reason why the legal solutions offered at the domestic level could not be applied at the international level. The argument continues in Chapter II on the question of jurisdiction. Here the position is taken that the transnational lawyer would not start from the basis of national sovereignty and power but rather from the premise that jurisdiction is "essentially a procedural matter that could be amicably agreed to by all nations." Such an agreement, it is held, would not involve a radical departure from present practice since the standard distinctions made between the areas of national and international and between criminal and civil jurisdiction have

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become extremely obscure. It is only by means of legal fictions that these distinctions have been maintained. In the third and final chapter the author makes the observation that even where it is within the power of national courts to exercise jurisdiction, it may at its discretion decide not to do so; that is, power is not necessarily the deciding factor. Since transnational law includes all aspects of law—criminal and civil, international public and private law, and national public and private law—the author sees no inherent reason why a national or international court should not be allowed to choose those rules which “conform to reason and justice” in the solution of particular controversies. The choice need not be determined, the author concludes “by territoriality, personality, nationality, jurisdiction, sovereignty or any other rubric save as these labels are reasonable reflections of human experience with the absolute and relative convenience of law and of the forum—*lex conveniens* and *forum conveniens*.”

The author, Mr. Iconoclast, thoroughly chastises Mr. Orthodox, along with the law schools and graduate schools of political science for nourishing “old dogmas and fictions.” Yet it seems that Mr. Iconoclast also suffers from one of the traditional illnesses of international lawyers—the tendency to over-conceptualize the legal aspects of the relations between states. It is difficult to see a trend toward the acceptance of transnational law without seeing an opposing trend in the direction of a greater “nationalization” of international relations. The national state has increasingly invaded the social and economic spheres, thus investing with a political character relationships once considered non-political. We live in an age of “total diplomacy” where all aspects of international relations have political relevance. The author underemphasizes the particularistic force of nationalism which is essentially a non-rational force generating conflicts and tensions which cannot be compromised by appeals to universal concepts of reason and justice. This is especially true in a world which is fundamentally divided along ideological lines. As prescription, therefore, transnational law does not find a substantial basis in contemporary international relations.

Aside from its prescriptive tone, this book offers a hopeful beginning to the reconsideration of international law as a separate body of law. If international law is to shrug off the sterile yoke of apriorism, it must begin with the observable complex

of rules that govern the activities of individuals, groups, and states which cut across national frontiers. But to see in contemporary international relationships an "international society" in which all such rules have the status of law would be to return to an assumption that has plagued international law in the past — the equation of the international and national legal orders. It is necessary to go behind these rules to the social, economic, political, and moral factors which give rise to particular patterns of international behavior. In other words, to begin with "international society" as it exists, not with what it ought to be.

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THE ADMINISTRATION OF JUSTICE IN RETROSPECT, edited by Arthur L. Harding. Southern Methodist University Press, Dallas, 1957. Pp. 96. \$3.00.

The point of departure for the five scholarly essays comprehended in this brief work is fixed by the delivery of an address before the American Bar Association by the then youthful, but already eminent, Roscoe Pound, on August 29, 1906, upon the subject: "The Causes of Popular Dissatisfaction with the Administration of Justice."

Opening with a consideration of the historical address of Dean Pound the essays develop the impact of his "radical" suggestions of the need for improvement in the administration of justice, and the effect and the ramifications of consequent reforms over the past half century. Comparisons with phases of judicial processes and administration in Canada and Latin America are pointed in two of the essays.

The development of the subject comprehends historical, academic and practical considerations, each of which phases will assuredly strike responses of interest and serious contemplation in the mind of the reader. It may be considered that the approach to some of the problems discussed is perhaps unnecessarily academic, but such criticism does not detract from the practical value of the expressions of the distinguished scholars who authored the essays, nor does it lessen the impact of the inescapable conclusion as to the imperative need for further improvement of our judicial processes.

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