REVIEWS

CONFLICT OF LAWS, PART ONE: JURISDICTION AND JUDGMENTS. By Albert A. Ehrenzweig. St. Paul: West Publishing Co., 1959. Pp. xxxiv, 367. $6.00.

WE have become weary of being told how frequently legal questions now involve some foreign (interstate or international) element; still it must be said. Modern human affairs depend upon complex sets of arrangements which often cut simultaneously across several legal boundaries. As a consequence there are a great many occasions upon which more than one political entity is concerned with the outcome of a legal controversy. As a result it is essential to develop satisfactory patterns of accommodation. Otherwise interaction between legal systems would tend to break down. At the core of accommodation lies a deep commitment to the ordering possibilities of principles of reciprocity. In fact, it can be said that rules governing interactions between legal systems are but formalized statements of various aspects of reciprocity.

For interstate relations accommodation is promoted in the United States by the unifying impact of federal authority which is available to provide authoritative designations of what the true basis of reciprocity is in situations of dispute. Internationally the task is more difficult, as no comparably effective unifying structure is available to resolve disputes between nations. However, contrary to the prevalent form of skepticism, patterns of accommodation have emerged as a product of distinctive techniques designed to assure fair, predictable, and convenient outcomes in international legal controversy.[1] Determinations favorable to national interests in an instant case may thus be outweighed by a desire to avoid subjecting national interests to the burden of an unfavorable determination in the event that the case arises, with its facts inverted, in the foreign forum at some future time. So conceived, conflict of laws is a subject devoted to the study of the rules and the problems which emerge from interactions of all types between legal systems, especially as they are presented in judicial contexts. These considerations are at the basis of my understanding of conflict of laws.

Despite many reservations and criticisms I approach Professor Ehrenzweig's important book with considerable admiration. This eminent author is the first to undertake a comprehensive modern study of conflict of laws in the United States. The older treatises are hopelessly out of date now. The difficulties of the job are immense. It is necessary to have knowledge and under-

1. For a more complete effort to discuss the distinctive quality of legal order found in international society, see Falk, *International Jurisdiction: Horizontal and Vertical Conceptions of Legal Order*, 32 TEMP. L.Q. 295 (1959); *cf.* Falk & Mendlovitz, *Some Criticisms of C. Wilfred Jenks' Approach to International Law*, 14 RUTGERS L. REV. 1 (1959).

standing of almost every substantive area of law. Research is incredibly encumbered by the difficulty of locating the relevant court decisions. For example, key number systems offer little help. These obstacles perhaps explain the reluctance of others to take up where Beale left off. It may also explain why, at a time before collaborative research became fashionable and foundation-supportable, four of the outstanding experts in conflicts combined their talents to produce the leading casebook.[2]

The book under review is only Part One of a two-part treatise. Both parts will eventually be published together in a single volume. Part One is devoted to the related subjects of jurisdiction and the recognition of foreign judgments and contains, as well, a separate substantive analysis of jurisdictional problems in selected areas of domestic relations. Part Two will deal with choice of law matters.

I.

Ehrenzweig's book contains excellent brief discussions of the main technical problems presented by conflict of laws; a single exception to this endorsement results from what I feel to be the inadequacy of the treatment given to matters of public international law which have a bearing on the solution of conflict problems.[3] If one seeks to know the condition of current United States law pertaining to such random matters as personal jurisdiction over nonresident individuals or foreign corporations, the enforceability of foreign tax assessments, the recognition of foreign discharges in bankruptcy, access (standing) to sue of a foreign corporation that has been dissolved in its state of creation, and so on, Ehrenzweig's book contains an appropriate preliminary discussion. For one early finds a concise and lucid account, which highlights issues that have perplexed courts in the past, as well as sensible suggestions for the elimination of soft spots from present doctrine and reasonable anticipations of future developments. There is, in addition, valuable footnote documentation of the main cases decided up to the time of publication. The footnotes contain imposing enumerations of the secondary literature, including pertinent foreign materials, whenever technical matters have prompted significant scholarly commentary.

If the present condition of a doctrine appears to be confusing, then Ehrenzweig provides a useful sketch of its historical development. This often helps to explain how the law developed as it did and why (perhaps) it should now be

2. CHEATHAM, GOODRICH, GRISWOLD & REESE, CASES ON CONFLICT OF LAWS (4th ed. 1957).

3. This book must be read as if it fully ignored conflicts problems arising from the relevance of such doctrines of public international law as acts of state, sovereign immunity, expropriation, and nonrecognition of foreign governments. The treatment that Ehrenzweig does accord (one or two sentences of overgeneralization) is too sparse to count at all. A gloss is given to matters of subtlety and complexity which will only deceive if it is not ignored. See, *e.g.*, pp. 68 (nonrecognition), 107, 109 (immunities), 168-71 (expropriations and acts of state). This is an unfortunate failing, as full consideration of the bearing of public international law issues upon conflicts problems analytically belongs in this book.

changed.[4] Similarly, if American doctrine appears artificial or unsatisfactory or if foreign doctrine diverges, Ehrenzweig introduces comparative materials to suggest rational alternatives to the American solutions.[5]

Ehrenzweig's familiarity with the civil law permits him to suggest functional equivalences between the common law and civil law, thereby often enabling a reconciliation on a policy basis of what appears to be doctrinally incompatible. A functional equivalence exists whenever different legal doctrines are used to achieve a similar policy result. The practitioner only familiar with the approach taken by his own system is unable to perceive the functional equivalency and hence tends to be critical of "the other" approach. This partially accounts, one feels confident, for the notorious atmosphere of confusion and mutual recrimination which seems to accompany private law interaction between these two important legal systems. Ehrenzweig begins his treatise with the central functional equivalence which exists between "competence" and certain associated civil law rules and the common law conception of "personal jurisdiction."[6] Both doctrinal approaches seek principally to assure the defendant of fair notice and hearing; competence presupposes a substantial contact of the forum with the controversy (built-in fairness) whereas personal jurisdiction, with its tolerance of a suit against the "transient" defendant, must develop extrinsic rules to assure notice in time to prepare for a hearing. A civil court will treat rules governing service of process as "procedural" (easily satisfied by waiver or substantial compliance) whereas an American court will treat the same rules as "jurisdictional" (hence, demanding rigid compliance); but, as Ehrenzweig indicates, both systems are seeking to reach the same result by these distinct doctrinal pathways and there is no justification for the determination of which is the "better" approach.

Ehrenzweig, while scrutinizing technical matters, raises some suggestive and far-reaching questions. For instance, he conjectures an interesting explanation for the deterioration he finds in the formulation of constitutional standards (due process and full faith and credit) by the Supreme Court to control the mandatory dismissal of litigation. Satisfactory standards "would presuppose many hundreds of precedents as to each major field of domestic law, a task forever impossible for the highest court of the nation necessarily preoccupied with a myriad of more pressing problems."[7] This observation leads towards a central problem: if we accept the need, so persuasively urged by Professor Brainerd Currie, for a conflicts method which stresses the particularization required to accommodate subject-matter variations which possess policy significance, it becomes obvious that we cannot rely upon adequate Supreme Court leadership. This poses a difficult challenge for modern federalism. One

4. *E.g.*, pp. 110-11 (sufficiency of personal service), 120-22 (forum non conveniens), 145-47 (prorogation of other courts).

5. *E.g.*, pp. 126 (lis pendens), 171 (nationalization of corporate shares).

6. Pp. 1-2.

7. P. 139.

set of considerations favors the development of federal uniformity even if it must be achieved at a high level of generality. A separate set of considerations, quite inconsistent with the first, favors the development of standards adjusted to the specific needs of the subject matter. One is grateful to Ehrenzweig for bringing such matters as these into focus as perplexing modern problems for the conflict of laws.

II

Ehrenzweig has produced a very useful reference text. My criticisms of the book are based upon what I feel to be its deficient theoretical framework of analysis. This deficiency may result from Ehrenzweig's effort to write "not only for practicing lawyers and teachers, but also for students."[8] I regard the dominant need of each of these three audiences to be quite distinct. An attempt, such as this, to write for a combined audience will necessarily dilute the focus. I think that the book is most successful if it is considered as a reference resource for practicing lawyers, but its discussion of general issues is quite truncated for students and its theoretical approach is too tame and off center for teachers. One negative consequence of writing for several audiences is an ambivalence towards one's own insights. For example, Ehrenzweig explicitly resists changing traditional arrangements of material if his preferred rearrangement would appear to diminish the reference value of the text; this leads him to retain an arrangement he has suggested to be analytically inept.[9]

I object even more strenuously to the theoretical approach taken by Ehrenzweig towards the subject matter of conflict of laws as it is presented in an extended General Introduction to both parts of his treatise. After several close readings, I find this discussion, to put it rather too bluntly perhaps, badly written (overcompressed, jargon-filled, awkward syntax) and, what is worse, devoted almost exclusively to matters of secondary theoretical significance. The chapter deals mainly with a rapid survey of the destinies of the unitarian and pluralistic theories advanced at various times to account for the process of deferring to foreign law and claims, a discursive account of the sources (international, federal, state law) of conflicts rules, and a comparison of the international and interstate conflicts perspective. At best, if the presentation were more complete and less clouded, I would view it as a descriptive (or perhaps a historical) approach to theory. There is almost no analysis of the alternative implications of the descriptive materials, nor are reasoned evaluations included to indicate the strengths or weaknesses of particular attitudes towards the problems of conflicts.

8. P. XI.

9. Here is a typical formulation: "It has seemed appropriate, therefore, to deal with the development of the passive procedural capacity of corporations more fully under the heading of personal jurisdiction, in accord with the traditional, though analytically imperfect, treatment of this topic," p. 66, and in relation to local jurisdiction and service of process: "While consistent analysis would no doubt be highly desirable, it would necessitate much new nomenclature, and has had to be sacrificed, therefore, to the exigencies of practical use," p. 73. This latter statement strikes me as almost startlingly blatant.

In fact, Ehrenzweig does not provide a developed argument to support his own preferences. Thus his advocacy, always advanced in an insistent manner, often has the unconvincing tone of an ardently asserted *ad hominem* formulation. It is true that Ehrenzweig quite often is concerned here with what he has already advocated more fully in law review articles, and if one incorporates these by reference, one becomes less uneasy. However, this is a considerable and unrealistic demand to make upon the general reader. Furthermore, on occasion, truncated advocacy in the text is unaccompanied by fuller exposition elsewhere.

Of many examples I select one that seems to me to be particularly flagrant.[10] After a short mention of the impact of the *Klaxon* decision Ehrenzweig begins a new paragraph, without any preparation, with this sentence:

> *There can be little doubt, of course,* that a national law of conflict of laws would be *highly desirable* and that in course of time it might become a *necessity.*[11]

This is literally all that we are told! Thus Ehrenzweig disposes of a central problem for modern conflicts by a single grandiose assertion of preference. In fact, the nature of the alternative is not even explicated although the *Klaxon* case itself bears witness to a pull in the contrary direction. From the *Erie* case onwards, internal uniformity has been emphasized on a state level with a necessary sacrifice of that other kind of national uniformity which takes place when federal courts everywhere reach the same result. The *Klaxon* case extended the *Erie* thrust to choice of law matters; as we know, special difficulties are encountered here. But it is also true that *Klaxon* promotes the decentralizing impact of *Erie,* underscoring autonomy on a state level at a moment in our political history when further centralizations are viewed as, at least partially antidemocratic, by their tendency to override substantial preferences in some regions of the country. Thus a federal deference to state conflicts operates as a moderative gesture to those dissatisfied with contemporary political trends in the United States. I am not saying that this is decisive. But these questions suggest that the problems beneath Ehrenzweig's assumption are subtle and difficult, deserving, as a minimum, careful delineation prior to any

10. In another instance, Ehrenzweig, lamenting the state of the law governing the establishment of domicile in divorce cases, offers this one-sided comment: "The domicile requirement as the sole basis of local in rem jurisdiction, in its present diluted form, produces two serious evils: the defendant's exposure to the loose standards of notice and opportunity to be heard, and the plaintiff's ability to shop for the forum with the easiest divorce laws. A remedy for the first evil will probably have to await a reform of our entire system of jurisdiction. And suggestions for the solution of the second problem within the present framework hold little promise." P. 239. Ehrenzweig does not even refer to the other side which favors allowing people to avoid the hardship of living in states which have restrictive divorce laws; the real "evil" of the existing situation arises because the expense of "establishing" a foreign domicile makes the availability of divorce, for those living in antidivorce states, often depend upon economic status.

11. P. 29. (Emphasis added.)

advocated resolution. To put it rhetorically, without such a deeper presentation, in what useful sense can it be said that one *understands* the issue? I find Ehrenzweig's treatment of most of the difficult questions in modern conflicts to inhibit this deeper understanding. A method which fails to contemplate the alternative impacts of the various possible resolutions is seriously defective, and reveals, I feel, the lack of an adequate theoretical approach.

III

Ehrenzweig has, in a sense, no coherent theoretical framework. He talks about some general questions, but there is no attempt to suggest a comprehensive description of the endeavor of the conflicts scholar. This carries the positivistic empirical tradition too far. It seems possible to provide a major book such as this with a theoretical orientation which conditions the whole and points to its critical functions within the legal system. I shall try to give a very sketchy account of what I feel to be an appropriate theoretical orientation. This is absurdly presumptuous but it would be craven to criticize Ehrenzweig for his failure without, at least, hinting at the possibility of doing something different.

It seems to me that the central task of the conflict of laws is to develop adequate criteria for the allocation of legal competence. A portion of conflicts is concerned with the allocation of legal authority to act as the authoritative decision-maker, for example, rules as to personal service and dismissal of litigation. Here, conflicts functions to legitimate assertions of legal competence to exercise control over the litigation. The other main concern of conflicts is the choice of the forum which shall supply the substantive norms to govern the outcome of litigation—choice-of-law rules; again the task is essentially one of allocation.

What determines the adequacy of any particular allocation? The question calls for a statement of the preconditions of an adequate conflict of laws—the complete range of expectations that we possess in relation to the legal process. We seek an allocation which is predictable, fair, convenient, and, if possible, beneficial to the welfare of the adjudicating society. Such factors again focus on questions rather than answers; there is no easy way to supply answers, although we can say something about an appropriate method. This may be as far as the legal scholar should endeavor to go.

The achievement of these objectives through our system of conflict of laws depends upon a high degree of particularization of inquiry so that we can formulate allocation standards which are able to satisfy the peculiarities of each category (itself a difficult question of delineation) of the subject matter. Thus, for example, we want the allocation mechanism to distinguish the situation of a private individual litigant from that of a multistate corporation when matters of access to court or amenability to suit are involved.

One way to conventionalize our awareness of allocation as the crux of the conflicts endeavor is to invoke the traditional emphasis upon "jurisdiction."

Jurisdiction viewed from such an orientation can be conceived (as can its obverse—recognition of foreign judgments) as a series of techniques used to specify the *proper* outer limits of legal control available to a court in regard to a *particular* assertion of authority. Such outer limits condition every stage of legal proceedings from the preliminary determination of whether the court is to be allowed to create any legal consequences (whether it possesses even minimal jurisdiction) to the limits placed upon the legal solution that a court may impose, and finally, to the process of enforcing such a judgment. Such an approach, at least at a theoretical level of inquiry, by its emphasis on allocation, necessarily throws into focus the difficulties inherent in making the kinds of choices that must be made to establish adequate allocation standards.

Perhaps an illustration, revealing the failures of Ehrenzweig's method can put this more concretely; hence, I will examine what Ehrenzweig does with a *difficult*[12] modern problem—the much controverted validity of extending American antitrust laws abroad, especially to regulate foreign defendants. How shall legal competence be allocated when sovereigns, of formal equality, possess incompatible policies in relation to subject matter and compete for the assertion of the dominant claim? Ehrenzweig sidesteps the issue completely. Citing much of the controversial literature in footnotes (heavily emphasizing, incidentally, the restrictive, probusiness commentary),[13] Ehrenzweig limits his textual discussion to the following sentences:

> But in these and other cases, the courts "are concerned only with whether Congress chose to attach liability to the conduct outside the United States of persons not in allegiance to it. That being so, the only question open is whether Congress intended to impose the liability, and whether our own Constitution permitted it do so. . . ."[14]

This is a mere description of the task to be performed. The real question, however, remains unasked: How is a court to interpret such a statute when it notoriously lacks guidance as to the character of legislative intent? And to make matters worse Ehrenzweig mentions, in an offhand flourish, the way around residual difficulties which might flow from an unpopular decision by an American court:

> [N]otwithstanding possible hardship threatened from the concurrent interference of several governments, there can be no doubt that the United States, *subject to the competency assumed by Congress and subject to*

12. The emphasis upon the word "difficult" is important here as it is a way to indicate that a dispute exists as to the proper allocation criteria; when such a dispute is not present, then this kind of "deeper understanding" is not needed, and a positivistic survey of practice suffices. Therefore, if conflicts were a less "difficult" field of law, my objections to Ehrenzweig's method of approach would be less pertinent.

13. Why, for example, are there no citations to such perceptive pro-regulation commentators as Timberg, Berge, or Corwin Edwards in the long footnotes on p. 76? Even more surprising is the failure to cite the celebrated ATT'Y GEN. NAT'L COMM. ANTITRUST REP.

14. P. 76.

> *limitations imposed by international law,* "has" jurisdiction to seize any property rights within its reach. Whether the "jurisdiction" of American courts in so dealing with foreign transactions and citizens will be recognized abroad is a matter for the conflicts law of the foreign country.[15]

This is a bit like the father who is reported to have "helped" his young daughter who had been frustrated by her inability to solve a puzzle:

> "Just follow the rules, my dear."
> "But Father, there are no rules."
> "Follow them anyway, my dear."

The whole problem is to ascertain the meaning of the italicized phrases in the quoted passage. But Ehrenzweig's theoretical apparatus is not able to do more than to state the issue *as if* it were a real explanation. The method favored here would emphasize a specification of the factors favoring delimiting legal competence in the various alternative ways which reflect the different viewpoints in the controversy. What is gained by nonassertion? What is lost?

Even if one does approach this kind of issue as a matter of legislative intent it is still necessary to specify an outer limit of legal competence by reference to some sensible scheme of allocation. The rationality of the entire structure of conflicts depends upon the adequate performance of this task. But there is more to it than this; the substantive issue of foreign antitrust regulation usefully points to a need in conflicts development. There is a serious lack of acceptable legal techniques to justify the extension of legal authority into unfamiliar contexts, especially if the extension of such authority depends for its effectiveness upon the cooperation of other national sovereigns. Decisions in the United States, for example, will have an improved prospect of acceptance abroad if they will not only inform a foreign corporate defendant that Congress meant to regulate his international activities but, as well, offer a persuasive demonstration of why it deemed it necessary to do so. This is quite evident in all international conflicts situations where the basis of legal order rests far more upon considerations of reciprocity than it does in domestic situations. However, even interstate decisions should strive to make explicit the most persuasive basis of the decision so as to make it more acceptable to an adversely affected second state. For this kind of judicial explanation it is essential to possess a comprehensive theoretical framework.

A start towards this kind of a sophistication is implicit in *Vanity Fair Mills v. T. Eaton Co.*[16] The decision tried to emphasize the various factors which made it desirable to resist an attempt to regulate foreign activity and actors; underneath was a reliance upon a governing criterion of reasonableness. By explicating the rationality of restraint it prompts foreign courts reciprocally situated to exhibit similar restraint and similarly to refuse the claim of their sovereign.

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15. Pp. 76-77. (Emphasis added.)

16. 234 F.2d 633 (2d Cir. 1956), *affirming with modifications* 133 F. Supp. 522 (S.D. N.Y. 1955); *cf.* Lauritzen v. Larsen, 345 U.S. 571 (1953).

It would seem surprising that Ehrenzweig fails to mention this case in the text, as *Vanity Fair Mills* seems to be strong support for Ehrenzweig's own advocacy of "a contract-determined law of competency" to reformulate the technical rules governing personal jurisdiction, and thereby to overcome the inadequacies created by "the power myth" and the transient rule of personal jurisdiction.[17] But Ehrenzweig's failure to have an image accentuating the interconnectedness of the material in conflicts leads him to be unable to suggest a general method by extending his apt comment beyond the obsolescence of this single technical rule.

IV

Ehrenzweig writes in the Preface that the "partial separation" of international conflicts "is one of the principal aims of the book."[18] His discussion starts by informing us that "traditionally, ever since Story's *Commentaries*, American texts and casebooks in the law of conflict of laws have treated promiscuously cases and principles relating to international and to interstate problems."[19] The explanation offered for preferring separation at this stage is that "policies developing this control [of constitutional standards over interstate conflicts practice] are fundamentally different from those which have been determining international conflicts."[20] Just how are these policies "fundamentally different?"

It is difficult to summarize Ehrenzweig's argument, but it is based on several main considerations. First, the limits of interstate conflicts situations are determined by mandatory constitutional standards of full faith and credit and due process, whereas international conflicts rests upon the *discretionary* basis of comity. Secondly, subject-matter domains of nonoverlapping character exist which are best regarded from the separated perspectives of interstate and international concerns; for example, wrongful death statutes present matters most likely to arise in an interstate matrix, whereas an expropriation controversy is most likely to arise in an international matrix. And thirdly, the failure to separate results in "insistence upon formulas general enough to serve both fields, [which] may have impeded, and may continue to impede that patient and delicate 'weighing process' as to specific fact situations which alone can produce that rationality and predictability indispensable for the national or uniform conflicts law of the future."[21] These are interesting and important analytical observations, but I find them unconvincing as to the recommended solution to the polemical question in issue. Once again, as is so characteristic of the techniques of advocacy used throughout by Ehrenzweig, there is no effort to suggest the nature of the arguments which oppose his preference.

17. *Cf.* pp. 88-89. See also p. 89 n.5.

18. P. XI. See fuller advocacy of position in Ehrenzweig, *Interstate and International Conflicts Law: A Plea for Segregation*, 41 MINN. L. REV. 717 (1957).

19. P. 17.

20. Pp. 17-18.

21. P. 19.

It is impossible to raise the issue fully here. However, I think that there is no valid reason to transform the difference between international and interstate conflicts into an operational distinction; in fact, my own view is that the similarities between international and interstate problems are sufficiently significant, both as to policy and method, so that the effort should be rather to obtain a closer fusion. I agree ardently with Judge Cardozo's conclusion in *Loucks v. Standard Oil Co.* that "the misleading word 'comity' has been responsible for much of the trouble."[22] The use of comity has introduced the idea of a freewheeling discretion exercised by the forum state, and it is this which Ehrenzweig accepts as operative. But this is an unfortunate view as it overlooks the *need* to obtain stability, fairness, and convenience in international situations if international transactions are to proceed upon a reciprocally beneficial basis; there is no reason to allow the absence of supranational institutions to deprive the international order of a stable and nondiscretionary approach to foreign-created rights.[23]

To separate the two contexts is to accentuate the notion of comity *as discretion* in opposition to an image of full faith and credit and due process *as compulsion.* I think this is inaccurate as an analysis and unwise as a preferred direction of development. Ehrenzweig's lack of a comprehensive image of a conflicts method betrays him, I feel, into urging this regressive separation at the historical moment when so much energy is being invested to improve the stability of international transactions. A general comment made by Professors McDougal and Lasswell seems quite pertinent here:

> The effective authority of any legal system depends in the long run upon the underlying common interests of the participants in the system and their recognition of such common interests, reflected in continuing predispositions to support the prescriptions and the procedures that comprise the system.[24]

It is this emphasis that seems to me to be appropriate in a contemporary approach to the relations between interstate and international conflicts method.

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22. 224 N.Y. 99, 111, 120 N.E. 198, 201 (1918).

23. I think the Dutch school, from whom Story borrowed the comity idea to explain international conflicts, actually had this in mind, but one finds an even clearer insight in the approach of Savigny. Professor Lenhoff has described Savigny's position very well:

> Savigny did not assume that the application of a foreign law by the forum was a matter of "mere generosity or of entirely free discretion so as to regard such an application as being only casual and changeable at random." Rather, he believed that "the use of foreign law in conflict cases as one of the sources of law for a judicial decision" presented an example of a particular and progressive development in the law. . . . Savigny thought that, by virtue of "the international community of nations," the approach of the various nations in matters of private international law had shown a tendency towards reciprocal equality in the rules for dealing with a conflict of law problem.

Lenhoff, *Reciprocity: The Legal Aspect of a Perennial Idea,* 49 NW. U.L. REV. 752, 758 (1955).

24. McDougal & Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order,* 53 AM. J. INT'L L. 1, 5 (1959).

Whether one invokes full faith and credit or comity, the minimum and maximum enforcement of "foreign" law (both interstate and international) should be based upon an analysis of *reasonable expectations.*

Of course, this is not meant to deny that, on occasion, the internationalness of a legal controversy may be a differentiating factor. But it is a matter of degree that can be embraced within a unified method that does not build into its structure the kind of artificial and provincial distinctions based upon national boundaries that would result from Professor Ehrenzweig's advocated partial segregation.

Let me end by saying, as a perhaps belated gesture of humility, that Professor Ehrenzweig has written a book of sufficient stature that its solid scholarly achievements are a bulwark secure against, and in a sense beyond, the cavil of its critics. Its place as a reference text appears to be assured for the foreseeable future.

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THE USE OF INTERNATIONAL LAW (The Thomas M. Cooley Lectures). By Philip C. Jessup. Ann Arbor: The University of Michigan Publications Distribution Service, 1959. Pp. xiii, 164.

REFLECTION is the process whereby one casts back his eyes and thoughts over the occurrences of the past. Actually, it is an indispensable exercise, for progress can only be made by noting both the accomplishments and the errors of the past. Through an artful reexamination of important parts of the traditional body of international law, its past application, and by commenting on its future potential, the five lectures which Philip C. Jessup delivered in the Cooley Lecture Series at the University of Michigan Law School in the spring of 1958 fulfill the need for periodic reflection. These have now been published in one volume entitled *The Use of International Law.*

Dr. Jessup's first four lectures contain a critical appraisal of important phases of international law. Initially he surveys the world at large and the components of today's "international community," with particular emphasis on its subjection to the law. One can easily grasp the import of his observation that the term "international community" should now be used to describe not only a large number of political entities enjoying varying degrees of political independence and economic self-sufficiency, but also the various collectivities or organizations in which those entities are grouped for certain purposes.[1]

In discussing a variety of procedures for the settlement of international disputes, Dr. Jessup in his second lecture concludes that the United States might well take the lead in convincing governments that submitting a case to the International Court of Justice is not an unfriendly act and that the persistence

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1. Pp. 20-26.