Conflict of Laws: International and Interstate

Selected Essays

by

Kurt H. Nadelmann

With a foreword and introductory essays by
DAVID F. CAVERS, ARTHUR T. VON MEHREN
AND DONALD T. TRAUTMAN

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FOREWORD

The purpose of this volume it two-fold: to render the writings of Kurt Hans Nadelmann more accessible to the world of legal scholarship by bringing together a selection of his essays, with bibliographical guides to his other related writings, and, at the same time, to pay tribute to the author. To these ends the initiative has been taken by the undersigned, three of his colleagues in the faculty of the Law School of Harvard University who have been offering courses and seminars in the Conflict of Laws during his residence in Cambridge. We are sure that, throughout the world, there are many scholars in the fields enriched by his writings who would be happy to join us in giving recognition to his accomplishments. However, we believe that the volume itself will attest his abilities and that its reception and use will bring to Dr. Nadelmann as much satisfaction as more formal expressions of esteem.

By way of introducing the essays, we have contributed two notes in the writing of which the three of us have shared. However, the first of these, a biographical sketch of Dr. Nadelmann, has been prepared chiefly by David Cavers, and the second, a preface to the collection of essays and an appreciation of the significance of Dr. Nadelmann's contributions to learning, by Arthur von Mehren.

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KURT HANS NADELMANN

To an extraordinary degree, the career and scholarly achievements of the author of the essays in this volume have been directed and shaped by the vast upheavals that have marked our stormy century. Refusing to bow to adversities that might well have destroyed a less resolute spirit, Dr. Nadelmann has now attained the Biblical allotment of three score years and ten, yet continues the pursuit of knowledge and the advocacy of good causes with undiminished ardor.

Dr. Nadelmann was born in Berlin on May 4, 1900, the son of a businessman who held a court appointment as *Handelsgerichtsrat*. Graduating from the Mommsen-Gymnasium in Charlottenburg in 1918, he went on to law study at Freiburg im Breisgau and at Berlin, securing the doctorate from Freiburg in March, 1921. After service as *Referendar* in Berlin, he became *Gerichtsassessor* in 1926 and, thanks, he states, to a shortage of judges, was appointed immediately to the District Court in Fuerstenwalde, transferring shortly thereafter to the Central Court in Berlin. As a trial judge, Dr. Nadelmann once had to explain to his superiors the low volume of his opinions: the explanation proved to lie in the high volume of settlements in court that he had brought about.

Perhaps that flair led to his being called on to aid in dealing with the soaring volume of bankruptcies and corporate reorganizations that accompanied the mounting economic crisis. He found the reorganizations in particular to be to his liking, but his most spectacular case grew out of the bankruptcy of a church-supported building and savings association which had some 11,000 creditors. He had to rent the largest exposition hall in Greater Berlin for the creditors' meeting.

At the end of March 1933, the ugly process that was to destroy the German Republic and to lead eventually to the tribunal at Nuremberg reached Dr. Nadelmann. A card from his Chief Judge advised him, for his own protection, not to come to court for the time being. Dr. Nadelmann had heard

rumors that exit visas were to be required. *Verbum sap.* He took a sleeper that night for The Hague and went thence to Paris where he had family connections. However, he had been about to secure a life appointment to the bench, and his term appointment had some months to run. With characteristic determination, he refused to accept dismissal. Instead, he sued the State of Prussia for back salary, won a judgment, lost on appeal, and sought to carry the case by correspondence to the Reichsgericht, only to lose by a default judgment that the court refused to reopen. However, this case had a happy epilogue. After the war, Dr. Nadelmann not only secured the unpaid salary (with costs) but was offered an appointment to the bench for life as of April 1, 1933.

II

The journey to France was the beginning of a new career. To prepare for it and to gain an acquaintance with French procedures, Dr. Nadelmann had the good fortune to find a place in the office of an attorney in Versailles, Maître Edmond Bomsel, whose practice included commercial and bankruptcy matters. A year and a half later, Dr. Nadelmann took the examinations for the *Licence en droit* at the University of Paris and, while he admits they gave him trouble – especially a question on *renvoi* in German law – he succeeded in passing.

In 1935 Germany revised its law on Arrangements. At the invitation of the editor of the *Annales de droit commercial français, étranger et international,* the distinguished Professor Jean Percerou, Dr. Nadelmann submitted a paper describing the change. It was accepted, and he was soon made that journal's reporter on German law. This connection was later to prove of critical importance to Dr. Nadelmann's third career. In 1937 Professor Percerou was appointed general reporter on Bankruptcy for the Second International Congress of Comparative Law at The Hague. At his suggestion Dr. Nadelmann was named joint reporter, and, when Professor Percerou could not attend, Dr. Nadelmann had the task of presenting the report. To cope with language difficulties in summarizing American papers, he sought the aid of the chairman of the section – a New York Lawyer, Phanor J. Eder, who undertook to perform the task. Becoming interested in the new American bankruptcy law, Dr. Nadelmann took a vacation trip to the United States in 1938, a venture that led to the creation of a Comparative Bankruptcy Law Bulletin in the *Annales.* It also led to a correspondence with Professor James A. MacLachlan of Harvard, the Law School's expert on Bankruptcy Law. However, in the fall of 1939 came war and internment

followed by government service and a brief period in uniform as a volunteer. A new career had to be sought.

The quest for a renewal of his American visa led him in the winter of 1940-41 to Lyons where an interlude of waiting provided Dr. Nadelmann with an opportunity to pursue the study of Spanish, to work in the library of the Institute of Comparative Law, which had a good American collection, and to come to know the great comparatist, Edouard Lambert, with whom he discussed at length the significance of that surprising reversal of a century-old American doctrine in the decision of *Erie R. R. v. Tompkins*. However, the visa obtained, Dr. Nadelmann departed on a French troopship for Martinique, only to be intercepted by the British who interned him in Trinidad with his fellow refugees (on suspicion of being fifth columnists). However, that complication was short-lived, and soon a well-nigh bankrupt expert in bankruptcy law found himself in New York at the end of June 1941 with a new career to create.

III

Dr. Nadelmann's success in obtaining a visa was due in no small measure to the combined efforts of friends in need, including the lawyer who had aided him in The Hague a few years before, Phanor J. Eder. Mr. Eder and Professor MacLachlan had joined in bringing Dr. Nadelmann to the attention of William Draper Lewis, the first director of the American Law Institute, who, as former Dean of the University of Pennsylvania Law School, maintained his office at the School. He contemplated Dr. Nadelmann's employment in developing European annotations to the Restatement of the Conflict of Laws, a project that Dr. Rabel was expected to undertake. The project was abandoned, but with a fellowship from the University of Pennsylvania where he enjoyed the good counsel of Judge Herbert F. Goodrich, Dr. Nadelmann began a series of articles on the international recognition of decisions in the field of bankruptcy that remain the principal contributions to American legal literature on these subjects and that led to his election to the National Bankruptcy Conference. During the war, Dr. Nadelmann also served as consultant – as a "Dollar-a-Year Man" – to the Foreign Economic Administration, a war-time agency in Washington.

For two more years after the war, Dr. Nadelmann served as Visiting Assistant Professor on the faculty of the Law School, teaching seminars in the Civil Law. However, this was before the great development in International Legal Studies in American law schools. Comparative studies were generally viewed as a luxury, and Dr. Nadelmann's course was dropped.

However, at this juncture his Spanish studies bore fruit. So, too, did his bankruptcy articles which had been published extensively in translation in Latin America. New York University School of Law was creating an "Inter-American Law Institute" which offered a special program of instruction for Latin American graduate law students under Professor Miguel de Capriles. He enlisted Dr. Nadelmann as Lecturer in American Bankruptcy Law.

Dr. Nadelmann's duties did not require him to remain continuously in residence at the New York University Law School. Consequently, he was able in 1951 to accept an invitation from Professor MacLachlan to come to Harvard to assist him in the preparation of a treatise in Bankruptcy Law. His share of the work on the treatise, extending for more than a year, can best be reported in the author's words in the preface to the volume. Professor MacLachlan attributed a "considerable portion of the historical material and most of the comparative law material . . . to the influence" of Dr. Nadelmann, adding that "the book contains only a pale reflection of his extraordinary learning."

The great international library of the Harvard Law School was a many-veined mine of riches for a scholar of Dr. Nadelmann's wide-ranging curiosity. He became interested in the career of that great American jurist whose work had served as a bridge between the common law and the learning of the Continental scholars, Joseph Story , and a few years later this led to a productive Guggenheim Fellowship in American legal history. He was also able to take part in some research projects in the Law School for which I, as Associate Dean, had some responsibility, especially a study of the international legal problems of the peaceful uses of atomic energy. He also was able to guide Dr. Guido Rossi, LL.M. 1954, now Professor of Commercial Law at the University of Pavia, in preparing his 1956 treatise on American bankruptcy law, aid acknowledged in the preface to that work by Professor Mario Rotondi of the University of Milan.

Though he spent most of the week in the Harvard Law Library, Dr. Nadelmann assumed increasing duties at New York University which had established a new Institute in Comparative Law. He gave instruction in both Institutes in the Conflict of Laws, holding the rank of Adjunct Professor when in 1963 illness led to his resignation. His connection with the Harvard Law School was formalized in 1961 when he was accorded the title of Research Scholar. However, his activities were not confined to research. From the start of his stay at Harvard, the Library had the benefit of his expert advice. He joined in conducting several seminars offered by Professors Von Mehren and Trautman as well as one that I offered and was

an always available source of knowledge to those of us who lacked his truly global learning. In 1965, in belated recognition of a role that he was already playing, Harvard University made him a Member of the Faculty of Law.

Although the Harvard Law School had begun its new program of International Legal Studies in 1951, its development did not always proceed as far or as fast as Dr. Nadelmann thought it should. He often urged interested colleagues to play a more active role in international associations and conferences. On occasion, he was disappointed by the failure of some of us to respond adequately to opportunities to join with the scholars of Britain and the Continent and grew impatient with our pre-occupation with the interstate problems of our plurilegal nation. More fruitful, however, were his efforts to overcome the parochialism that he found in the United States Government with respect to cooperation with other nations in legal development.

Dr. Nadelmann's concern with the Federal Government's neglect of the private law interests of the American states began before his coming to Harvard. He had noted the vulnerability of American judgments in the courts of other nations, many of which refused to find reciprocity in the recognition accorded their judgments in American courts. His writings stimulated the interest of the National Conference of Commissioners on Uniform State Laws, and, in time, he was appointed Reporter for a project that resulted in 1962 in the approval of the Uniform Foreign Money-Judgments Recognition Act, a statute now adopted by seven states, including the most important sources of international trade.

Dr. Nadelmann's chief complaint against the Federal Government was the failure of the United States to join The Hague Conference on Private International Law and the Rome Institute for the Unification of Law. A note reporting the first postwar session of The Hague Conference, initialled "K.H.N.," appeared in Volume I of the *American Journal of Comparative Law*. (This, incidentally , was a continuation of K.H.N.'s association with the *Journal's* warmly admired first editor-in-chief, Professor Hessel E. Yntema of the University of Michigan, and the commencement of his share in the editing of the *Journal*, as the representative of the American Foreign Law Association.) The note aroused interest abroad and at home and its sequel, a longer article on the Federal Government's refusal to take part in international efforts to unify conflict-of-laws rules, was a factor of consequence in the State Department's decision, at the instance of the Legal Adviser, Herman Phleger, to respond to an invitation to send observers to the meetings. As a result, Dr. Nadelmann joined the delegation of four

members who attended the 1956 session. He continued as an observer in 1960 and in 1964 was named to the first United State delegation to take part in the Conference, legislation having been enacted to authorize American membership in both the Conference and the Rome Institute, a move that had been advanced by the appointment of a Harvard law professor, Abram Chayes, to the office of Legal Adviser to the Secretary of State.

Dr. Nadelmann has continued as a member of subsequent United States delegations to The Hague and of the State Department's Advisory Committee dealing with international unification of law. At The Hague, he has been a spokesman for the view that, in accordance with the conception of its founder, Dr. T. M. C. Asser, the Conference should include uniform laws as well as conventions in its armamentarium. As yet this view has received only limited acceptance, but Dr. Nadelmann's writings have gained for it greater understanding.

A catalogue of the various ways in which Dr. Nadelmann has been putting to use his learning, his talents, and his energies (which a recurrent back complaint only occasionally dampens) would over-extend this introduction. Note can be taken of only two more. His interest in the problems of judicial jurisdiction, augmented by his work on the Uniform Foreign Money-Judgments Act, has led to a succession of articles, only partly represented in this volume, in which he has subjected the exercise of personal jurisdiction on the various "improper" bases to a continuing penetrating critique. His criticisms are fueled by his sense of the injustices that may be perpetrated through the diverse devices (including the abuse of personal service) which many nations still permit to be used against non-resident foreigners. The other activity is a compilation of uniform laws and conventions in the field of conflict of laws that will make accessible this important documentation to lawyers and scholars who do not have comprehensive law libraries close at hand. The preparation of this volume (to be published in 1972) has led to an enterprise that is close to Dr. Nadelmann's heart. For its introduction, he has been putting together from the records of the Nineteenth Century and the early decades of the Twentieth the story of the efforts of lawyers and legal scholars in the Old and the New World to induce governmental action to bring about an international legal order in which, wherever they may be, people and their private interests can be assured of fair treatment within a framework of appropriately applicable laws. If another could be found to project this history to the present day, Dr. Nadelmann's name would have to be added to the roster of distinguished jurists whose work and vision he has been engaged in describing.

David F. Cavers.

THE WRITINGS OF KURT H. NADELMANN

The selection of fifteen articles from a store of well over one hundred, dealing with a diversity of subjects, inevitably risks creating an impression of scatter. The editors, though finding choice difficult, have, however, been reassured by the discovery that Dr. Nadelmann's writings reflect an almost organic development: one subject has led very naturally to another in a sequence shaped in part by internal considerations, in part by the circumstances of Dr. Nadelmann's careers. For editorial reasons, the sequence of articles in this volume has departed from the order in which the writings appeared. Accordingly, in this introductory note, we have sought to trace the relationships of the articles that are being republished among each other and with other writings by Dr. Nadelmann. Through bibliographical notes (arranged by sections and identified by letter), the selected writings are placed in the context of Dr. Nadelmann's other work. In the text that follows, references to articles included in the several bibliographies are by letter and number.

Dr. Nadelmann's "basic training" as he likes to put it, was in Bankruptcy. Consequently, a consideration of his literary production can best start with the writings in that field. Familiar with the practical aspects of the bankruptcy problem from his judicial work in Germany, he then observed bankruptcy administration under the completely different French system. Comparison was inevitable and became for him a way of life. The first truly scholarly writing was a paper for the Comparative Law Congress held in The Hague in 1937 on the effects of the economic crisis on bankruptcy legislation. The Percerou-Nadelmann paper (D-5) appeared both in Europe and the United States. Dr. Nadelmann then assumed editorial responsibility for a Comparative Law Bulletin in the Supplement to the *Annales de droit commercial*. His own contribution to the first issue of the Supplement was a paper on "Arrangements in Private International Law." (D-6).

When force of circumstances added an American dimension to Dr. Na-

delmann's experience, he put his knowledge of Continental theory and practice to use. His American writings begin with "Recognition of American Arrangements Abroad," a survey of foreign law (D-7). Dr. Nadelmann's attention was particularly attracted by discriminations against creditors from abroad, found in South America, notably, but also elsewhere. A variety of later papers dealt with this matter (D-8, D-13, D-15, D-16, D-19, D-22). Two papers, connected both in time and in theme – "International Bankruptcy Law: Its Present Status" (D-9) and "Bankruptcy Treaties" (D-10) – sum up the research and give Dr. Nadelmann's general conclusions as to whether and how better cooperation between nations can be secured in the field.

Dr. Nadelmann's sure instinct for the practical applications of historical and comparative findings next led him to consider how the American bankruptcy system might be improved. The conflicts system of the American Bankruptcy Act is analyzed in a paper which appeared in 1946 in the *Harvard Law Review* (D-14) and in a follow-up study extending to Compositions (D-17). Three principal recommendations were made for amendment of the Bankruptcy Act. The Act was amended along the suggested lines and two papers in the *International and Comparative Law Quarterly* (D-23 and D-31) cover the changes. Widely reprinted abroad, they have made the American system of conflicts in bankruptcy well-known.

In the course of his research, Dr. Nadelmann came across a report which had been overlooked of the leading English bankruptcy case, *Solomons v. Ross*. This new report was of far more than historical interest as it suggested a more flexible reading of the decision, a reading today accepted by the English literature generally. The paper covering the discovery, "*Solomons v. Ross* and International Bankruptcy Law" (D-12), is included in this volume.

The field of international bankruptcy was dormant during World War II, but by the 1950's had become a subject of wide interest in Europe in the Common Market area where better cooperation in the bankruptcy field was needed. In 1960, Dr. Nadelmann took advantage of a round table in Luxembourg at the International Faculty of Comparative Law to speak of American experience and to call attention to a Tract of about 1825 he had found in the British Museum in which Jabez Henry, the early English writer on Conflict of Laws, had advocated drafting "An International Bankrupt Code for the Commercial States of Europe." (D-28). Invited in 1970 to comment on the recently released draft of a Bankruptcy Convention for the European Economic Community, Dr. Nadelmann presented at a round table held in Milan a paper on foreign assets under the draft Con-

vention which is included in this Collection (D-33), as is the earlier paper on Bankruptcy Treaties (D-10).

When Dr. Nadelmann arrived in the United States in June 1941, he found the legal profession vigorously discussing *Erie R. R. v. Tompkins* (1938), in which the Supreme Court overruled the 1842 decision in *Swift v. Tyson.* Justice Story had there held that, on questions of "general" law, the federal courts were not bound to follow the decisions of the State courts. Prompted by Professor Lambert, Dr. Nadelmann had read everything he could find in Lyons on the Story period and the beginnings of American law. Story, who had in many ways helped the Berlin-born Francis Lieber, attracted Nadelmann as an human being and as an intellect. This interest in Story continued after his arrival in the United States. Nadelmann found that little attention had been given to two papers which Story had written on the American legal system for publication abroad, one at the instigation of Lieber and the other at the request of Foelix. A paper in the *Boston University Law Review* (A-1) using the French title of the Story article published in Foelix's *Revue* is the first of a series of articles on Story and American legal history. A lucky "finder," some time thereafter Dr. Nadelmann came across in the Lieber Papers acquired by the University of California at Berkeley the original text of the other Story paper, the one written for Lieber and previously published only in German. The English version appeared in the *American Journal of Comparative Law* with a Preface by Felix Frankfurter and an introduction by Nadelmann (A-3).

By-products of his research on Story and American legal history are papers on the French-born Philadelphia lawyer Du Ponceau (A-2), on correspondence between Story and the Scots law professor George Joseph Bell (A-6), on the author of the first American Law Dictionary John (Jean) Bouvier (E-6), and another "find," a statement of American law, in particular, conflicts law, given by Henry Wheaton in London in 1827 in answer to questions asked by Jabez Henry, and published at the time in a London law journal. The "Question-and-Answer" paper was reprinted in the *New York Law Forum* (A-4) with an Introduction.

The work on Story automatically had led to research on the Comity Theory, its originators, and its appearance in the United States. This research was the basis for an important paper contributed to the Gutzwiller *Festgabe* "Some Historical Notes on the Doctrinal Sources of American Conflicts Law" (A-5). It is reproduced in this Collection. The subject was taken up again in a preface, "The Travels of the Comity Theory," written for the American reprint of Hessel E. Yntema's paper "The Comity Doctrine" (A-10). But the more inclusive paper is perhaps "Joseph Story's Con-

tribution to American Conflicts Law" (A-7), in which advantage is taken of entries in a note book, now in the Treasure Room of the Harvard Law Library, which Story kept in the early days of his career. The paper appears in this Collection.

Increasingly, the American federal system and its problems came to preoccupy Dr. Nadelmann. The work on *Erie R. R. v. Tompkins* provided a basis, and study of the National Bankruptcy Act gave further insight. Nadelmann made a special study, which appeared in 1950 in the *Michigan Law Review* (D-20), of the difficulties arising in the field of insolvent decedents' estates. At that time he recommended use of the federal bankruptcy power to make the bankruptcy system available if assets are in more than one State or if the State law is deficient. The National Bankruptcy Conference has approved the proposal in general and is working on the necessary amendments to the Bankruptcy Act.

The federal system's ramifications on the international level also began to interest Dr. Nadelmann. A doctrine had evolved, supported by successive Federal Administrations, that the United States would not cooperate in international efforts for the unification of law if the subject matter to be unified were generally within the legislative competence of the States rather than that of the Union. It was thus natural that the Hague Conference on Private International Law held its first post-war session in 1951 without the United States being present. Dr. Nadelmann noted the absence critically in a paper in the third issue of the (new) *American Journal of Comparative Law* (B-1). The basic study appeared in 1954 in the *University of Pennsylvania Law Review* (B-2). The history of the non-cooperation doctrine was given and its consequences discussed. The Federal Government was said to disregard the interests of the States of the Union. The availability of the treaty-making power was noted, as well as the fact that, if indicated, difficulties could be overcome by securing the cooperation of the States. A reexamination of the situation in national organizations and within the federal establishment led to an agreement between the Eisenhower Administration and the Government of The Netherlands as spokesman of the Hague Conference that the United States would send an Observer Delegation to the next session of the Hague Conference.

At the session, on behalf of the Observers who included a past president of the National Conference of Commissioners on Uniform State Laws, Dr. Nadelmann suggested that the Hague Conference reconsider its methods and envisage use of uniform legislation as well as of treaties. This American proposal found its elaboration in a paper by Nadelmann included in this Collection (B-6) which was translated into many languages, including Ja-

panese. The issue (B-7) was settled by a compromise at the next session of the Hague Conference (B-11). The question (B-12) continues to be discussed (cf. B-15).

Subsequent developments are a matter of public record. In 1964, the United States on the basis of Congressional authorization joined the Hague Conference and the International Institute for the Unification of Private Law in Rome. The various steps as well as the history of the Hague Conference up to the 1964 session are covered in Dr. Nadelmann's paper in the Unification of Law issue of *Law and Contemporary Problems* (B-20). The paper is included in this Collection.

Various aspects of unification of law are considered in other papers (e.g. B-15, B-10 and B-14). Dr. Nadelmann took strong exception to a decision taken by a diplomatic Conference held in 1964 to make a uniform law on the international sale of goods applicable to all sales irrespective of established principles of the conflict of laws (B-17, B-18, B-19, B-24). In this he joined distinguished conflicts specialists in the leading countries of the world. The problem is mentioned in a paper included in this Collection in which the author, on the basis of experience of more than a decade, "revisited" his earlier writing on Uniform Legislation versus International Conventions (B-24).

Turning to another problem of international cooperation, Dr. Nadelmann considers the American policy of non-cooperation in international efforts to regulate conflicts questions as particularly detrimental in the field of reciprocal recognition of judgments. For one of the first issues of the *Nederlands Tijdschrift voor Internationaal Recht* he wrote a paper discussing how the United States might accomplish what the United Kingdom had achieved through its series of treaties on recognition of judgments with Continental powers (C-2).

Later writings on the same subject had the benefit of a basic study of the clause in the Constitution of the United States providing that full faith and credit be given in each State to the judgments and public acts of every other sister State. Under a Guggenheim Fellowship for research in American Legal History, Dr. Nadelmann investigated the origins of the clause and came up with a number of important suggestions not made by earlier writers. The paper calls attention to the res judicata effect accorded ecclesiastical court decisions by the courts at Westminster and to passages in *Gilbert on Evidence*. Nadelmann's new insights into the clause's origins also derive from his stimultaneous study of the Bankruptcy clause. The principal paper (C-5) and the paper on the origin of the Bankruptcy Clause (D-26) have been included in this Collection.

Dr. Nadelmann found that the development of the American internal rules on recognition of judgments from sisters States had a relation with the liberal recognition accorded foreign country judgments in the United States. In several papers he contrasted American practice with the law on recognition in foreign countries. A survey article in the *Iowa Law Review* (C-6), which was complemented by other articles (e.g. C-4 and C-7), suggested that the status of judgments rendered in American courts would be improved considerably in foreign countries with the reciprocity requirement if the law on recognition of foreign judgments were codified by the States of the Union. The proposal was picked up by the National Conference of Commissioners on Uniform State Laws, which decided to produce for the benefit of the States a Uniform Foreign Money-Judgments Recognition Act. Dr. Nadelmann was engaged as draftsman. With the assistance of Professor Willis L. M. Reese of Columbia University, he produced succeeding drafts leading to the Uniform Act promulgated by the Conference in 1962 and today enacted in California, Illinois, Maryland, Massachusetts, Michigan, New York, and Oklahoma (C-10).

In Dr. Nadelmann's view, the use abroad of jurisdictionally improper fora has created today's hostility in many countries against recognition of foreign judgments. With a paper written in 1960 for the Hessel E. Yntema *Festschrift,* which he edited in collaboration with John Hazard and Arthur von Mehren, Dr. Nadelmann began his attack on the principal improper fora in common use, nationality or domicile of the plaintiff and presence of assets for rendition of an in personam judgment (C-9). This much quoted paper is included in the Collection. The subject became of practical importance when the Hague Conference decided to produce a Convention on Recognition and Enforcement of Foreign Judgments. The improper fora used in some member States became a major obstacle to successful conclusion of the Hague Conference's work on this Convention (C-14). A crisis developed at The Hague because a Common Market draft Convention sought within the Common Market to make enforceable against non-residents of the Market area all judgments rendered by Common Market countries, including those rendered at a jurisdictionally improper forum. Dr. Nadelmann covered the subject in a paper in the *Columbia Law Review* on Jurisdictionally Improper Fora in Treaties (C-16), which is included in this Collection. He restated the issue in a paper for the *Common Market Law Review* (C-17). The problem was not solved at the October 1968 session of the Hague Conference, which adopted a Resolution without teeth on the subject. Dr. Nadelmann discussed the situation in a paper in the *Harvard Law Review* (C-18), which was reprinted in the Congressional Record in connection with the introduction of a Bill giving the President retaliatory powers.

Dr. Nadelmann's original and primary interest in the recognition problem was in recognition of money-judgments, but work by the Hague Conference on recognition of foreign divorce decrees led him to research on the historic controversy over use of nationality or domicile as the principal test for recognition of foreign decisions in status matters. This research led to a rather spectacular find still too recent to evaluate in all its consequences. In a paper published simultaneously in the United States and Italy – the Italian version provided by Professor Rodolfo De Nova of the University of Pavia – Dr. Nadelmann demonstrated that Mancini, the father of the nationality doctrine, would have fallen back subsidiarily on the law of the domicile for nations with more than one legal system. The paper (A-11) is included in this Collection.

Though he has dealt with important doctrinal writers like Story, Waechter (A-9), and Mancini, Dr. Nadelmann has maintained a skeptical approach toward conflicts theories (A-8) and, it must be added, an open hostility toward black-letter rules (B-27). Apologetically, Dr. Nadelmann attributes this attitude to judicial experience at too early an age. His strong individualism may furnish another explanation. This individualism has found expression notably in his writings on the right of the judge who remains in the minority to announce his dissent and the reasons for it, a right denied to the dissenter in a number of Continental European systems, including the German and the Italian. Dr. Nadelmann brought the subject up at a Round Table discussion in 1957 in Chicago on the Rule of Law held under the auspices of the International Committee of Comparative Law. His interest continued and several important papers followed. "The Judicial Dissent – Publication Versus Secrecy" has come to be considered the basic study on the subject (E-10). With a follow-up paper (E-11), it is included in this Collection. In Germany, legislation has been enacted providing for the open dissent in the Constitutional Court. Dr. Nadelmann makes no secret of his pleasure at having helped promote law reform in a matter which he considers vital. Cardozo's famous statement on the dissenter, which Dr. Nadelmann quotes at the close of the Judical Dissent Paper, expresses well his own faith as a legal scholar and law reformer: "The voice of the majority may be that of force triumphant, content with the plaudits of the hour, and recking little of the morrow. The dissenter speaks to the future, and his voice is pitched to a key that will carry through the years. Read some of the great dissents, the opinion, for example, of Judge Curtis in Dred Scott v. Sanford, and feel after the cooling time of the better part of a century the glow and fire of a faith that was content to bide its hour. The prophet