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THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS. By Walter Wheeler Cook. Cambridge. Harvard University Press, 1942. Pp. xx, 473. $5.00.

In this volume the late Walter Wheeler Cook has collected the ten articles on conflict of laws which he contributed to legal periodicals from 1919 to 1942. To this series he has added eight unpublished papers which, though generally sketchier in content than the published essays, increase materially the usefulness of the book. The law review articles are printed substantially unchanged, but corrections or modifications have been made by means of footnotes, and some essays have been enlarged by the addition at the end of "Supplementary Remarks, 1942."

Cook's influence on the past two generations of law teachers and students was considerable. He taught at many institutions—Nebraska, Missouri, Wisconsin, Chicago, Yale, Columbia, Northwestern—and was one of the founders and director of the ill-fated Law Institute of the Johns Hopkins University. His course on scientific method in the law was always marked by the attendance of law professors. His greatest prominence was achieved as a leader, together with Karl N. Llewellyn and Jerome Frank, of the realist school of jurisprudence, which insists upon the study of law as it actually operates in society. He believed, as he made clear in his Commemoration Day Address at the Johns Hopkins University in 1927, that the method of the historical school, with its emphasis on the genesis of legal rules, and that of the analytical school, with its stress upon the logical consistency of legal rules, could never lead to an adequate grasp of law as an instrument of social control. In this approach he was helped by his early training as a mathematical physicist and by the attention which he gave to the modern developments of logic.

It is necessary to emphasize Cook's concern with scientific method, inasmuch as he himself regarded his employment of the method in the field of conflict of laws as his principal contribution to that vexed domain. His two primary assumptions are that scientific method, as exemplified in physics, chemistry, and biology, is available for use in the solution of legal problems, and that the

method can also be utilized in the development of a theory of value. In the preface to the present volume he expressly disclaims any intention of presenting a complete treatise on the conflict of laws. His declared object is to analyze some of the common problems of the field through the instrumentality of scientific method. In the main, Cook's expositions of scientific method follow the analyses of Dewey; but the implications of the preface and the first chapter that the analysis as a whole turns on the discoveries of modern logic are not borne out by the book. Only five of the eighteen chapters that comprise the work take their point of departure from expressly articulated logical premises, and the logical assumptions of all the chapters are for the most part founded on the traditional Aristotelian logic. However, this is not meant as a minimization of the significance of the volume. Cook's regard for the achievements of scientific method led him to a critical analysis of the presuppositions of conflict of laws, as it had been currently expounded, and resulted in a reformulation of some of its traditional attitudes.

Cook was content to call his specific brand of scientific method "scientific empiricism". In essence, he held it to represent a fusion of the formerly distinct methods of logic and experimental inquiry, in which the methods of observation, hypothesis, deduction, and experiment were combined. As a good realist he adopted the Holmesian position that law is the prophecy of what courts will do in fact; and as a scientific empiricist he repudiated the idea that the basic principles of conflict of laws could be determined merely by study and reflection, and that the soundness of particular rules could be tested by reference to such principles. He initiated his inquiry by investigating what courts actually do, as distinguished from the descriptions they give of the reasons for their actions. He concluded that the vested rights theory of Dicey, and above all Beale's territorial theory, could not be supported by the results of such an investigation. Their apparent simplicity is delusive and they "prove upon consideration to lead to inconsistencies and complexities, and that what seems at first sight a more complex and less natural approach turns out in the end to bring us the only true simplicity—a statement which as clearly and accurately as possible summarizes observed data and so arranges and relates them that they can function as aids in dealing with future experience." Cook's own conclusion was that in the conflict cases a court never enforces foreign rights,

but only rights created by its own law; that these rights are, however, as nearly homologous as possible to those created by the foreign law. He is at pains to show that the difference between the application of foreign law or the recognition and enforcement of a foreign-created right on the one hand, and the application of domestic law and the enforcement of a domestic-created right on the other, is not a difference merely of words. The two ways of stating the matter lead to differences of result in the actual decision of cases. At this point the question naturally arises, how are conflicts cases to be decided if the answer cannot be deduced from the principles relating to jurisdiction? Cook thinks the only permissible answer is, by the same methods actually used in deciding cases involving purely domestic torts, contracts, property and other matters.

These views have been the subject of extensive debate and criticism since they were first put forward. During the period of the preparation of the *Restatement* they were advanced with vigor; but the Reporter for the *Restatement* was Professor Beale, who not unnaturally preferred his own views, and notwithstanding some assistance from the Council of the American Law Institute, the theories of Professor Beale triumphed in the *Restatement's* final form. Not the least valuable aspect of the present volume are the pungent commentaries which pervade its pages on the apparent illogicalities of the *Restatement.*

In spite of Cook's emphasis on the importance of scientific method, it must not be supposed that the volume is merely an exercise in logic. Altogether it represents a strenuous effort, by one of the remarkable minds in the legal field in our time, to throw light on some of the difficult problems which appear in what is perhaps the most obscure domain of legal thought. The late Mr. Justice Cardozo once remarked to Cook that "the average judge, when confronted by a problem in the conflict of laws, feels almost completely lost, and, like a drowning man, will grasp at a straw." It was Cook's object to indicate at least the direction in which land lay. Sometimes in the present volume he forgets his own purposes and clutches at straws himself. Thus, in the chapter on domicil he insists that the theory of the *Restatement* that every person has at all times one domicil, and no person has more than one domicil at a time, is erroneous. He is influenced here by the criticism in logic of the belief that there can be only one true or correct definition of any

object. He therefore stresses the fact that it would be extraordinary if the word "domicil" had been given the same meaning by courts in the different fields in which it is employed—taxation, domestic relations, intestacy and so on. He cites a Massachusetts case in which a divorce was allowed the wife in spite of a tenuous showing that the husband was domiciled in the state, a statutory requirement that had to be satisfied. Cook then supposes that the former husband is sued in another action when physically out of the state, and constructively served in an attempt to recover a personal judgment. Of course, the service is valid if the husband is domiciled in the state. According to the principle of the *Restatement* the court must allow the service unless it is to repudiate the divorce decision. But Cook is sure that on the facts shown the court would not permit constructive service, and he therefore concludes that the proposition of the *Restatement* is in error. However, this is supposed, and Cook cites no case in support of his position. Moreover, it would not be difficult, on the basis of the ordinary principles of statutory interpretation, to extricate the Massachusetts court from the apparent dilemma in which Cook has placed it. A court which has quashed the indictment of a bootlegger on the ground that the year of the offense was not specified as being A. D. or B. C., thus apparently putting the defendant in grave doubt as to when he was held to have committed the offense, could dispose of such a matter even without the benefit of argument. Such lapses into pure logicism on Cook's part, however, are rare. No one in recent years has been more insistent upon keeping the human equation to the forefront in all legal studies. That element in his attitude toward legal doctrines, when coupled with his assiduous development of a sound scientific method, made him the significant figure he was.

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TRAFFIC COURTS. By George Warren. Boston. Little, Brown and Co., 1942. Pp. 245.

This excellent book, published under the joint auspices of the National Conference of Judicial Councils and the National Committee on Traffic Law Enforcement, should be of interest not only to lawyers and those charged with the enforcement of traffic laws, but also to the increasing numbers of thoughtful persons who, recognizing the seriousness of the accident situation, have grown to "resent and ridicule an outrageous system of traffic law enforcement which violates almost every American principle of justice and equity".

The author, authorized to institute a nationwide survey of traffic courts by the National Committee on Traffic Law Enforcement and the National Conference of Judicial Councils, submitted his report in 1940, with fifty-seven specific recommendations. The report was approved not only by the sponsors, but by the Section of Criminal Law, the Section of Judicial Administration, the Junior Bar Conference, and the House of Delegates of the American Bar Association. Subsequently the report was adopted by the National Safety Council and the International Association of Police Chiefs.

The volume is significant not only because it is based on a report that has merited the approval of the several professional bodies functioning in the field of traffic law enforcement, but also because it is the product of an investigation and study, by questionnaires and field conferences covering the entire country, seeking to ascertain both what is established by law and what is actually being done in practice. The author has delved into public relations and political relations in a research which has been vigorous and thorough.

The first chapter deals with the general problem of traffic law enforcement, which the author finds is fundamental for the public safety. He reaches the conclusion that the defendants involved in traffic accidents and violations represent a cross section of our population. The vast majority of them are otherwise law abiding citizens, and their experience with our courts is usually limited to the occasion on which they are summoned for a traffic offense. It is here they receive the all powerful first impression of the judicial structure, and it is here that the objective in traffic law enforcement and the means proposed to accomplish that objective must appeal to the common sense of the public.

The subsequent chapters set out clearly the results of the author's nation-wide investigation. With a few outstanding exceptions, the general method of traffic enforcement presents a situation well calculated to substantiate the public feeling toward the administration of justice in the so-called "inferior courts". The evils of the Justice of the Peace system (happily abolished in Maryland in 1939 by an Act of the Legislature) are thoroughly explained, and the necessity for a higher type of magistrate and of court personnel is indicated by the fact that for all intents and purposes the "inferior courts" are courts of both first and last resort to the average person. Problems such as the "fix", political pressure on the magistrates, and the lack of uniformity in fines and sentences all receive careful treatment, with conclusions based on first hand information.

In the chapter devoted to the physical facilities of traffic courts among other examples cited appears the following:

> "5. A Southeastern City: The room is very dirty. It has a concrete floor and is located over the pistol range. During pistol practice every word of the Judge is punctuated by firearms. The clerk's desk is located near the bench and the continuous traffic to it over the concrete makes it extremely difficult for the Judge to hear testimony or for the defendant to hear the Judge."

Anyone who has had occasion to be in Part I of the Traffic Court of Baltimore City, during an afternoon session, will recognize the above description as accurate.

The volume is well documented, and the charts furnished as the basis of interstate comparisons are exceptionally well prepared. The recommendations proposed by the author are both sound and practical. The appendix contains the forms of questionnaire used in compiling the charts, as well as suggested forms to be used in Traffic Court procedure.

A really adequate index, and an accompanying foreword by the Honorable Arthur T. Vanderbilt, former President of the American Bar Association, add to the general excellence of the book.

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