

With the objectives which concern Judge Vanderbilt and with what he thinks worth working for, there is little or no disagreement. Many enlightened lawyers share them though few have worked for them so hard as he. But along the way, there are dicta to argue about, as is customary among lawyers.

For instance, do lawyers lack a sense of individual responsibility for leadership in public opinion? The author says so. This reviewer would make the criticism differently to the effect that lawyers too often lead public opinion without adequate knowledge on which to express views, much less argue for them.

Again, how much must the lawyer know and how much of it should the law schools try to teach him? Must he know "both the common law and the civil law on a comparative basis?" Have the law schools "lamentably failed to appreciate their responsibility for the educational qualifications of their students in the way . . . the medical schools have?" It is probably true that "In very few of our law schools . . . is any consideration given to the primary importance of lawyers assuming individual responsibility for party leadership or interesting themselves in local affairs." But should there be, except by example and a general atmosphere recognizing that lawyers have public responsibilities?

Lawyers in both private and public capacities ought to know a great deal. Some of what they need to know can be learned in law school. A foundation for some of it should have been acquired before the student came to law school. Sometimes it is; sometimes not. But education cannot stop with graduation. "All too often," says the author, "the lawyer looks on his license to practice as an official certification that he knows all about the law that he needs to know for a lifetime." Judge Vanderbilt is certainly right in pointing out that this point of view is wrong. I doubt that the law schools can supply the extra learning to make it right. The process of education must be continuous in law as elsewhere. The experience of the joint committee on continuing legal education of the American Law Institute and the American Bar Association is finding, to its great satisfaction, that our profession is rapidly recognizing that fact.

HERBERT F. GOODRICH†

DICEY'S CONFLICT OF LAWS. Sixth edition, under the general editorship of J. H. C. Morris with specialist editors. London: Stevens & Sons, Ltd. and Sweet & Maxwell, Ltd., 1949. Pp. cxxix, 912.

DICEY'S sixth edition of *Conflict of Laws* is out with full standard equipment including Corrigenda, Preface, Table of Foreign Cases, Table of Cases, Table of Statutes, Table of Books, Table of Periodicals, Table of Principles and Rules, Introduction and Index. The book is bound in deluxe fabrikoid

† Circuit Judge, United States Court of Appeals, Third Circuit.

upholstery, weighs 3 pounds, 7 ounces and sells for 4 pounds, 10 shillings f.o.b. London, or 12 dollars and 60 cents delivered in New Haven (18 dollars pre-devaluation exchange).

This work, predecessor in form to the American Law Institute's Restatement of the Common Law, was originally (1896) prepared as a categorical statement of general rules, followed by explanatory comment and illustrations. The new edition follows the same pattern. Inasmuch as the work is intended to be "essentially a practitioner's book, not a work on theoretical jurisprudence," it is to be presumed that this manner of presentation has found enduring favor with the English bar. "The technique of Rule, Comment and Illustration," says the general editor, "is not one which all of us would have adopted if we had been writing our own book on the Conflict of Laws." That English lawyers react to stimuli of this type much as their American brothers is suggested by the further observation that "the method has the disadvantage that it is sometimes apt to produce a false impression of certainty when authority is scanty or conflicting." Indeed, as Falconbridge has pointed out, the editor admits a "regrettable tendency on the part of [English] judges to treat Dicey's propositions as a final statement, perfect in form and merely subject to be checked or modified here and there" (p. xiv). Nevertheless, the general editor finds that "the method undoubtedly possesses advantages for the practicing lawyer," a statement probably more accurate in reference to Dicey where cases and other authority are cited to support blackletter rules than to the American Restatements.

The new Dicey omits the chapter on British nationality on the adequate grounds that its relation to Conflict of Laws is all but negligible and on the more dubious grounds that the British Nationality Act of 1948 has so complicated the subject that hardly anybody can understand it. The reader also gets the somewhat irrelevant information that for the convenience of practitioners who have been accustomed to find an account of nationality within the pages of Dicey, a treatment of the subject by one of the specialist editors will be published in another book.

Also omitted from this edition are most of the references to American cases because, among other reasons, of the difficulty of keeping up with them "and the consequent risk of referring to cases that no longer represent the law." The book is replete, however, with general references to the standard American works on the subject including those of Story, Beale, Goodrich, Lorenzen and Cook, as well as to the Restatement of Conflict of Laws.

A valuable contribution of the sixth edition is its treatment of the highly important preliminary problems of the Conflict of Laws, most of which, apparently, the collective conscience of the editors would not permit them to reduce to Rule, Comment and Illustration. One will search in vain in the index to the first edition for any reference to renvoi, qualification or characterization, although there is a footnote statement of the case of *Collier v. Rivaz*, 2 Curt. 855 (1841) (p. 77), and a brief discussion of the ambiguity in the phrase "law

of a country" (pp. 5, 6). The fifth edition (1932) contains a somewhat more extended discussion of *renvoi* in the Appendix and a brief footnote reference to primary characterization (p. 43). Indeed, we have it from the general editor that it was not until 1934 that the problem of characterization was introduced to English Lawyers (p. 62).¹ The sixth edition contains an adequate survey of the learning on these intriguing subjects as well as some critical comments by the editors.

To one familiar with English cases such as *Re Annesley*, [1926] Ch. 692, *Re Ross*, [1930] 1 Ch. 377, *Re Askew*, [1930] 2 Ch. 259, *Re O'Keefe*, [1940] Ch. 124, and *Re Duke of Wellington*, [1947] Ch. 506, it may come as a mild surprise to learn that the law of a given country means "usually the local or domestic law which the courts of that country apply to the decisions of a case to which the Rule refers." And yet, as is correctly pointed out, the total *renvoi* theory has never been applied by English courts outside the field of succession and personal status. This fact induces the editors to differ from the statements of law contained in the fifth edition (p. 866) and come to the plausible conclusion that "the truth would appear to be that in some situations the doctrine is convenient and promotes justice, and that in other situations the doctrine is inconvenient and ought to be rejected" (p. 56).

The problem of characterization is handled largely by summarizing the views of the principal authors who have written in English on the subject, especially Beckett, Lorenzen, Falconbridge, Cheshire, Robertson and Cook. The editors are reluctant to accept the distinction between primary and secondary characterization (to say nothing of tertiary characterization) and are hospitable neither to the suggestion of solution by reference to the law of the forum nor to characterization by the *lex causae*. Instead, they indicate a preference for Falconbridge's view that the court of the forum should consider the provisions of any potentially applicable laws in their context before definitely selecting the proper law—a principle which, the editors believe, will make the process of characterization "fully flexible." At this point, at least one reader gets the impression of detachment from reality which so frequently accompanies a discussion of theories in a vacuum. There is little or no treatment of the policy considerations concealed in the characterization problem and barely a suggestion of any value-standards by which these policies can be measured. And if it be suggested that the English writers are far less concerned about such matters than American or Continental scholars, it may be questioned that a major work designed as "essentially a practitioner's book" should assume that the English lawyer is content to practice his profession without an understanding of what he is talking about.

Finally, in this connection, there is included in the treatment of these preliminary matters a discussion of the less frequently noted "incidental question" (including those of the second degree), *i.e.* the problem involved where the principal issue is referred by the forum's Conflict of Laws rule to the appro-

1. By Beckett in THE BRITISH YEAR BOOK OF INTERNATIONAL LAW.

appropriate foreign law but there bob up subsidiary or collateral questions which themselves involve foreign elements. Should the subsidiary or collateral issues be governed by the appropriate Conflict of Laws rule of the forum or by the Conflict of Laws rule of the foreign law which governs the main question? The editors hesitatingly indicate a preference for the Conflict of Laws rule of the forum, quoting Nussbaum² for the statement that not a single English, American, or Continental case has been found which so much as discusses the problem of the "incidental question."³

In conclusion, it may be said that the sixth edition of Dicey's book, in the main, perpetuates the virtues and the faults of the original work. What Dicey called the "positive method" as distinguished from the "theoretical method" is religiously followed. The many important developments in the Conflict of Laws since the date of the fifth edition (1932), especially as they have affected English law, are reflected. The recent English cases have been collected with painstaking care by J. H. C. Morris⁴ and his corps of specialist editors⁵ and incorporated with skill into the running documentation. The Rules have been appropriately modified or changed, new exceptions added and corresponding Comment and Illustrations added, deleted or qualified. Dicey's sixth edition, although something less than inspired, is a good job, done in the solid tradition of English legal scholarship and, on the whole, is reasonably well calculated to serve the purpose intended by the original author and the new editors.

FOWLER V. HARPER†

2. PRINCIPLES OF PRIVATE INTERNATIONAL LAW 105 (1943).

3. Here again, the American reader is apt to lose patience with the slavish adherence to the "positive method." The editors express their preference as "more consistent with the approach" adopted by the House of Lords in *Shaw v. Gould*, L.R. 3 H.L. 55 (1868). It does not leap to this reviewer's eye in any persuasive form just why the authors of a major work on a difficult subject, with no examination of the policy factors involved, or indeed with no critical analysis of any kind, should take a position based solely on "the approach" of the House of Lords in a seventy-year old case which is only dubiously in point on a part of the question involved.

4. Of Gray's Inn, Barrister-at-Law; Fellow and Tutor of Magdalen College, Oxford; All Souls Lecturer in Private International Law.

5. The imposing array includes L. Cowen, of Gray's Inn, Barrister-at-Law; Fellow and Tutor of Oriel College, Oxford; Vinerian Law Scholar; R. Cross, Solicitor, Fellow and Tutor of Magdalen College, Oxford; O. Kahn-Freund, of the Middle Temple, Barrister-at-Law; Reader in Law in the University of London; K. Lipstein, Lecturer in Law in the University of Cambridge; C. Parry, of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law; Fellow and Tutor of Downing College, Cambridge; Lecturer in Law in the University of Cambridge; R. S. Welsh, of the Inner Temple, Barrister-at-Law; Advocate of the Supreme Court of South Africa, Vinerian Law Scholar; and B. A. Worthley, of Gray's Inn, Barrister-at-Law; Professor of Jurisprudence and International Law in the University of Manchester.

† Professor of Law, Yale Law School.