

Still another reason for the inclusion of as many of the older cases as possible lies in the fact, especially true of those decided by the Court under Marshall, that they were decided on *reason* rather than *authority*. Their study thus becomes often an intellectual exercise of the first order. Compare, for instance, the opinion of Chief Justice Marshall in *Gibbons v. Ogden*¹ with that of Chief Justice Taft in *Sonneborn Brothers v. Cureton*.² The former is a logical inquiry upon which the student is launched in almost the first sentence and which is never relaxed until the last sentence; and in the interval between almost every possibility of the Commerce Clause has been probed in a composition which is a single artistic structure. The latter, in contrast, is a thing of scissors and paste—useful enough in its way and replete with information, but certainly without an ounce of mental stimulation for the student.

On the whole Professor Dodd's selection of cases seems to me admirable, though I think it falls down at one point. It was a mistake, I hold, in treating of the relation of the Commerce Clause to the State Taxing Power to omit the basis cases in 15 Wallace, and 114, 116, 118 and 120 U. S. The editing, too, is excellent, the cutting wisely done, and the general order of treatment of the entire subject logical. One topic that seems to be rather unduly slighted is the "full faith and credit" clause. Perhaps if Professor Dodd had had before him the recent extraordinary decision of the Court and the still more extraordinary opinion of Justice Brandeis in *Bradford Electric Co. v. Clapper*,³ he would have stressed more this clause, which is apparently trembling on the verge of a new and unheralded fruition.

Another excellent feature is supplied by the annotations, which almost always occur at significant points and which, without exhausting learning, furnish the student guidance while whetting his interest.

"The proof of the pudding is the eating thereof." But this particular pudding looks so good that I have about decided to avail myself of the next opportunity to give it the crucial test of trying to teach from it.

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OUR WONDERLAND OF BUREAUCRACY. By James M. Beck. New York: Macmillan Company, 1932. pp. xv, 272.

The title of this work is from "Alice in Wonderland" and is scarcely appropriate, the fundamental conception of "Alice in Wonderland" being the logical application of illogical premises; while it seems that Mr. Beck admits that bureaucracy must exist, his quarrel is with the illogical development of a logical premise. Indeed, throughout his quotations are erudite rather than apposite, and are valuable rather as a criterion of his literary criticism than as exposition of the argument which they accompany.

The purpose of the book is a little obscure. "In the broader sense,"

¹9 Wheat. 1, 6 L. Ed. 23 (1824).

²262 U. S. 506, 67 L. Ed. 1095 (1923).

³286 U. S. 145, 76 L. Ed. 1026 (1932).

writes Mr. Beck,¹ "bureaucracy, as hereinafter considered, refers to the irrepressible war between the individual and the State, and involves the question as to the just limits, under the higher law, of the State over the property and life of the individual." Bureaucracy however is not, as might appear from a hasty first reading of this sentence, the name of this war; rather it is the name of one of the parties in another war against both the individual and the state.² "He [Uncle Sam (the State as an individual?)] . . . is dreaming in a wonderland of Socialist experiments in a government, whose constitution was intended to be a noble assertion of individualism."³ It appears then that the state and the individual are not awake to the war and that bureaucracy is not the real name of the enemy; it is merely the name of the means by which Socialism, the real enemy, attacks the individual and the Constitution. From this follow what seem to be Mr. Beck's two main points. First, he proves that, unknown to the people, the United States has been plunged in Socialism; secondly, that this Socialism is contrary to the spirit and the letter of the Constitution.

"Unless," writes Mr. Beck, "the tide of increasing public expenditure begins to ebb, this Nation originally dedicated to individualism, will increasingly become a Socialistic state. Indeed few states are more Socialistic."⁴ Presumably then the danger is not Socialism as usually understood. What Mr. Beck means by Socialism is made, if possible, more obscure by his arguments. An individual, he holds, can always get a greater advantage by spending his money himself than by allowing the state to do it for him. But the very examples quoted immediately refute the argument.⁵ Granted that insect control, veterinary research and irrigation are necessary, which Mr. Beck does not deny, then the cheapest method for the individual to secure for himself these services is to use the government as a means of cooperative action. It may be difficult to prove that each individual farmer receives profit in the same proportion as he pays taxes, but at least he will have veterinary services and insect control at a far smaller cost than if he had to rely on his own individual efforts. Nevertheless, says Mr. Beck, this is Socialism because the Eastern States pay taxes to support the farmers, and his supreme example is the Federal Farm Board.⁶

Even if one accepts Mr. Beck's naïve assumption that the East could have accumulated her wealth without the West and the South, there still remains one of those paradoxes which are indeed the great feature of the book. The object of the Farm Board was to do for the farmer what the tariff attempted to do for the mercantile interest. Mr. Beck agrees that the immediate object of the Federal Union was protection of trade. Yet he argues that objects for which he admits the Union was formed, are, by the very terms of that Union,

¹ P. x.

² P. xiv.

³ P. vii.

⁴ P. 85.

⁵ P. 70.

⁶ P. 139.

irrevocably prohibited. True, administered by Congress and not by the Tariff Commission ("the greatest potential menace to the protective tariff that could be devised"),⁷ tariffs are allowed, but any extension of the principle for the benefit of the farmers is forbidden by the Constitution. The actual words of that document give Mr. Beck no difficulty. The "General Welfare" clause is dismissed as the slip of an "unguarded moment"⁸ and its mention in the Preamble as "an afterthought".⁹ It is a little difficult to reconcile his rejection of the interpretation of the clause during the last century and his view that the Constitution "is a living organism" whose "vitality depends upon its correspondence with the necessities and spiritual tendencies of the American people."¹⁰ But perhaps individualism is part of the "higher law"¹¹ and thus overrides the Constitution. But what is individualism, "once the great characteristic of the American people"? On this subject Mr. Beck leaves us in the dark.

At any rate the American Constitution "is the noblest expression of the spirit of individualism in the annals of the world." But as Mr. Beck himself implies¹² the Confederation was such a noble expression of the spirit of individualism that there was hardly any government left at all. Thus the Constitution is apparently the noblest expression of what it was expressly designed to suppress. Those powerful corporations, the States, used their sovereignty for their own advantage and not for the good of the people of the United States as a whole. Therefore, says Mr. Beck, a Union was formed, one of the fundamental conditions of which was that the government should refrain from controlling similar corporations, such as the Railroad companies, who used their position for "the shameless pillage" of the public.¹³ Beyond this and the vague implication that Individualism is Liberty and Inequality, Mr. Beck gives us no definition.

There is no doubt a great deal to be said against bureaucracy, as that word is usually understood. It is unfortunate that Mr. Beck has attempted to use these arguments to prove an entirely different thesis,—that the Constitution does not permit any interference with private enterprise no matter how harmful to the general public that enterprise may be. And this thesis is not advanced by the introduction of a host of irrelevant considerations. That Washington was not a proud and rich aristocrat,¹⁴ that Bernard Shaw is a "flippant and shallow satirist,"¹⁵ that Senator Vare was wrongfully deprived of his seat,¹⁶ are all no doubt matters of interest, but, as Mr. Beck himself said of the last point, they have nothing to do with bureaucracy. They might profitably have been reserved for discussion in some future work. The evils

⁷ P. 196.

⁸ P. 22.

⁹ P. 23.

¹⁰ P. 243.

¹¹ P. x.

¹² Chap. II.

¹³ P. 156.

¹⁴ Pp. 1-10.

¹⁵ P. 38.

¹⁶ P. 191.

of Federal bureaucracy are not likely to be cured by an ill-assembled and ill-informed attack upon a nebulous Socialism, and Mr. Beck, when he attempts to make it a party weapon of industrial aggrandisement, does little honor to the Constitution he lauds.

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CASES ON THE CONFLICT OF LAWS. By Ernest G. Lorenzen. Third Edition. St. Paul: West Publishing Company. 1932. pp. xxx, 1118.

Lorenzen's Second Edition of his cases on Conflict of Laws appeared in 1924, the same year that both he and Professor Walter W. Cook in two important papers published in the the Yale Law Journal¹ definitely formulated a so-called Yale Critique of the orthodox doctrine taught for a generation by Professor Beale at Harvard. It was natural therefore that the Lorenzen collection should, in the words of one reviewer, have challenged "a comparison with the work of Professor Beale". For that comparison, ably executed, the reader must go to Professor Isaacs.² The Third Edition which appears in 1932 continues to accentuate as its paramount point of interest, contrast with the traditional handling of these materials. The more so because it is presented at the very time that the Beale view (or as that charmingly disarming teacher would prefer to say, the *common law* or *legal* view) has taken on a new permanence through the imminent publication of the American Law Institute Restatement of the Conflict of Laws. The Isaacs gloss, supplemented by Professor Beale's own second edition, definitely retains its pertinence.³

The Third Edition suggests an additional point of comparison,—that between it and the Second. Professor Lorenzen has continued to move "left". His preface provides the clue,—“In accordance with present tendencies, it seemed expedient to abandon such general categories as “domicil,” “procedure,” and “property,” and to develop all rules of the Conflict of Laws in connection with the particular fact situations to which they relate”. And the book carries out the promise of the preface. Second Edition chapters entitled, Nature of the Subject, Domicil, Procedure are dropped; the large Second Edition chapter on Obligations is divided into one chapter on Torts and Workmen's Compensation Acts, one on Contracts (sub-headings,—Bills and Notes, Insurance, Arbitration Agreements), and one on Sales and Mortgages (Sales of Lands, Sales of Chattels, Mortgages and Conditional Sales). A new chapter entitled Business Organizations (Partnerships, Corporations) absorbs the material formerly found in Foreign Corporations. The old chapter, Inheritance and Foreign Administration, is supplemented with material on Trust Estates and Debtors' Estates and presented in a chapter entitled generally, Administration of Estates. This reclassification is extremely interesting. Is it

¹ Lorenzen, *Territoriality, Public Policy and the Conflict of Laws*, 33 YALE L. J. 736; Walter W. Cook, *The Logical and Legal Bases of the Conflict of Laws*, 33 YALE L. J. 421.

² 38 HARV. L. REV. 125 (1924).

³ Compare Yntema, *The Hornbook Method and the Conflict of Laws*, 37 YALE L. J. 468 (1928).