

BOOK REVIEWS

ECONOMICS OF TRANSPORTATION. By D. Philip Locklin. Business Publications Co., Chicago, 1935. Pp. xii, 788. Price: \$4.00.

This book is clearly intended as a text book for college classes on transportation. It is devoted primarily to railroads, though in the latter part it includes two chapters on water transportation, two on highway transportation, and one on air transportation. Thirty chapters, 665 pages, are devoted to railroads, centering primarily on freight and referring only casually to passenger transportation.

Within a brief review it is impossible to give an adequate account of the book. The first chapter considers the broad economic significance of transportation, and the second sketches transportation prior to the railroads. Chapter III surveys railroad construction and the next describes the present system in the United States. Then follow an analysis of freight rates, an account of regulatory legislation, and discussion of rate control, reasonable rates, accounting, capitalization, financing and service matters. There is a chapter on government ownership and operation, and five chapters on other modes of transportation and their relation to the railroads.

The author has succeeded in presenting a well balanced book. While it has some redundancy which might have been avoided by different arrangement, it is clear and well written, and presents reasonably the pros and cons on the various questions. It should serve excellently all who desire a comprehensive account and discussion of transportation in a single volume. It organizes well a great mass of data, analyses and arguments, and brings to date the development of transportation policies and problems.

While the book maintains a serene balance in controversial matters, it is bound to irk those who (like the reviewer) have reached more or less definite views on transportation conditions and policies. The author is sometimes irritatingly complacent when very plain speaking would seem in order. After all, he is concerned with fundamental matters of national interest. On the whole, while he does criticize and indicates his own ideas on important problems, he nevertheless appears quite satisfied when he has explained things as they are. For text book use this severely balanced presentation may be regarded as unbiased and scientific, but for those interested in clear policy and progressive national interest, it does not furnish much aid in reaching better conditions.

This intellectual detachment with respect to national policy appears throughout the book, and is well illustrated by the discussion of rate structures, capitalization, regulation, private management and government ownership. As to rates, there is elaborate explanation of historical factors, which are largely treated as if they were vitally active today and actually produced continuous adjustment to changing conditions. The author states that one criticism against government owned railroads is that they often adopt rather rigid and arbitrary rate structures, while in the United States the principle of charging what the traffic will bear has resulted in a rate structure that was designed to move the traffic. Perhaps he intended emphasis upon the "was" as against present actuality.

What has characterized railroad rates during the past generation has been their inflexibility, with important exceptions. During the period of the depression and with increasing competition of motor transport, the railroads have mostly stood pat on rate levels predicated upon bygone conditions of cost, value

of service, and monopoly. There has been signal failure to readjust with shifting conditions; hence terrific loss of traffic and destruction of earning power. While this fact has not been ignored by the author, it has been regarded rather complacently,—at least for anyone who feels that there is vital public interest in the modernization of the financial as well as physical structures and organization of the national transportation system.

With regard to capitalization, the author discusses clearly the relation of capitalizable and non-capitalizable expenditures, and raises the question whether railroads are over capitalized. He appears to accept Commissioner Eastman's estimate of 24 billion dollars as the investment or original cost of the total railroad properties in the United States, as against total capitalization of 23.6 billion dollars or of 19.5 billion dollars in the hands of the public, after deduction of intercorporate holdings. These figures are taken to indicate no over-capitalization. But they do not take into account the enormous obsolescence that has taken place; the extensive reconstruction, re-equipping, and abandonments that will be necessary to bring the railroads properly to their function of furnishing modern transportation. These far-reaching changes seem inevitable if the railroads are to hold their present traffic and earning power, if not to regain their losses to other modes of transportation. One can hardly escape the conclusion that there is vast over-capitalization in the face of transportation realities, especially remaining earning power, as against nominal showing of investment, property valuation and securities outstanding.

The author reviews quite fully the efforts and experience of public regulation of railroads. While he points to the difficulties that have been encountered, he comes to the general conclusion that regulation has not been so gross a failure as has been claimed by various students and writers, though it has not been the success that one might desire. He proposes no basic reform, and evidently will jog along cheerfully with the essentially futile system of control with which the country is encumbered. The very fact that railroad regulation has existed since the 1880's, and now faces an over-capitalized, disorganized, discordant and incompetently managed transportation system, should shake the author out of his serene tolerance of position.

There is little critical discussion of railway management. While, of course, poor organization is casually considered at different points, on the whole the impression is conveyed that railway management has been pretty good and that really no vital changes are needed. The author almost ignores the managerial duplications, the nepotism and company politics in appointments to administrative positions, the stagnant officialdom, and the crushing overheads that have been frozen with railroad operating expenses. He treats rather lightly the overall improvement in earnings and transportation service that could be realized by thoroughgoing consolidation, by stripping off duplicate and dry-rot organization, by adjusting capital structures to present realities, and by real effort to meet transportation needs.

The author's super balance in considering basic problems is manifest particularly in his treatment of government ownership and operation, to which a separate and single chapter is devoted. In less than twenty pages he surveys public ownership the world over, and classifies nicely the advantages and disadvantages of public ownership and operation. He expressed desire in this important matter to make clear his own position, and so concluded: while government ownership would have certain advantages, it would not prove a cure-all of present transportation problems; but on the other hand it would not be the dire calamity that is often pictured by alarmists, if a reasonable amount of intelligence and sincerity of purpose were applied to the task of making it work.

Well, now, this is non-bias, but it certainly does not furnish much light where modern illumination is needed. There is, of course, the danger that glaring light may also produce excess heat in the particular field of illumination,—yet considerable heat might help. Clear seeing is essential, and this is always likely to be clouded by prejudice based on deeply inculcated views and self-interest. The author certainly is not biased, but apparently he has kept himself from thorough clear seeing (and recording what he sees) by his eagerness not to be regarded as biased and unscientific. Here indeed is the vice of current economic writing on important but controversial matters of national interest. The scientific method is assumed to be the full marshalling of facts that are involved,—but clear weighing of the facts, and interpretations in terms of national policy and welfare, have come to be widely held as unscientific by economists.

So far as this reviewer is concerned, the mere accumulation of facts is just work, but has little scientific significance except as to conclusions reached on economic policy with respect to public interest. The most vital scientific question, it seems to me, is whether private ownership and operation can be best adapted to public welfare, or whether public ownership and operation is better. The mere setting out of "facts", and the balancing of "pros" and "cons", seem quite sterile. The question appears so fundamental to a desirable economic organization for the progressive welfare of the country that the author's treatment impresses me as profoundly futile from the scientific standpoint.

So far as I personally am concerned, when I consider the financial impotency of the present railroad system, the tremendous reconstruction and re-equipping that will be required, the needed readjustment in the interest of national economic needs, the incessant conflict between private interests and public objectives, the vast duplications and wastes, and the financial and political abuses that have always come from private railway sources, I must confess impatience with cavalier treatment. The most vital transportation question is that of proper organization and control from the standpoint of national objectives, and it deserves rather better than a nice balancing of pros and cons in the controversies that are involved.

John Bauer.†

CASES ON BUSINESS LAW. By Leslie J. Ayer and Paul P. Ashley. Revised edition by Stephen Darden Brown. Prentice-Hall, Inc., New York, 1935. Pp. xxix, 1291. Price: \$4.50.

If we assume that the purpose of a course in Business Law is to present a condensed law school course in Contracts, Sales, Negotiable Instruments, Agency, Partnership and Corporations; if we assume further that the approved method of presentation of these subjects to law students will serve the needs of laymen; and if we assume finally that there is sufficient uniformity and stability in the business law of the several states to make it safe or even possible to impart the substance of it to students, there must in the course of time and effort develop a book exactly like this revised edition (really a third edition) of Ayer and Ashley's *Cases on Business Law*. In perfection of detail it represents the end of a line of evolution.

That the underlying assumptions are shaky is indicated, however, even at the very height of this development. The editing of the cases down to single points, the addition of give-away questions, the elimination of all references to case authorities, the heavy leaning on the *Restatement* and on the Uniform

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Acts, and the avoidance of "technical" matter, are pretty clearly the results of the discovery that business students are not adequately served by condensed law school courses. The teaching of law to men who are not likely to be able to look up the law as they need it involves deviation in content as well as in method from the law school pattern. There is hardly any escape from the conclusion that as intelligent laymen they are more concerned in knowing something about the law than in knowing the law. The only consideration that makes the opposite pretense possible is that three parts of this book—Sales, Negotiable Instruments and Partnership—are superficially standardized in uniform acts, and two parts—Contracts and Agency—are dogmatically presented in Restatements. The sixth part—Corporations—presents the difficulty in its crudest form, for the uniform act, in this case adopted by only four states, can hardly pass as a composite picture of the law of this all-important and complicated division of Business Law. Of course, on closer inspection this assumption of uniformity and stability fails in every other part of the course, particularly in Contracts. However adequate such books may be for mental training, they leave so much to be desired from a practical point of view that it seems inevitable that a new line of evolution be taken up. We look here in vain for any practical suggestions to increase the resourcefulness of business men, such as the uses of the legal institutions described in solving their business problems. We look in vain for any effort to connect the legal principles with the now fairly standardized curriculum of the business school—the connection, for example, of the whole law of Sales with the various divisions of Marketing; or of Negotiable Instruments and certain special forms of Contract with the whole subject of Credit. As a complete achievement of a particular quest this book stands at the end of an epoch in the history of textbooks. But the quest is inadequate for tomorrow.

Nathan Isaacs.†

OUTLINE OF TOWN AND CITY PLANNING. By Thomas Adams. Foreword by Franklin D. Roosevelt. Russell Sage Foundation, New York, 1935. Pp. 368. Price, \$3.00.

The seriousness of the recent economic crisis and the complexity of its underlying causes have inspired a bewildering variety of plans. The publicity which has been accorded these recent varicolored schemes has served to make the people of this country planning conscious.

With the return to "normal" conditions, there has appeared an encouraging manifestation of interest in sane, scientific, and comprehensive city and regional planning. Now is the opportune time to educate the public and the community leaders in the art and scope of city planning. The present volume is dedicated to that end. The *Outline of Town and City Planning* has been written primarily for two audiences: (1) that ever increasing group of civic-minded men and women throughout the country from whom the leadership in and the support of comprehensive planning will come, and (2) the embryo city planners going forth from our colleges and universities to enter some branch of city planning as a profession. In this study, both audiences have been supplied with a background of information which should enable them to pursue their respective interests more intelligently.

While comprehensive planning of a scientific nature is a product of the past quarter of a century, the foundations of such planning have been in the process of development for five thousand years. In this book, the salient

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features of this development have been interestingly and concisely presented by a competent student and authority on city planning.

Three thousand years before Christ, Egyptian, Chinese and Indian rulers planned their cities, but they were motivated primarily by the necessities of military defense and the influence of religious practices and traditions. In addition to ancient city planning, the author considers sketchily the planning developments of the mediaeval and Renaissance periods, as well as modern planning. Until modern times, social well-being was rarely a consideration in the planning of towns and cities, although sanitation and public recreation received considerable attention in the planning of some early cities. According to the author, the thing that gave distinction to the ancient, and to the mediaeval, city plan "was the organization of the civic architecture and building uses in relation to streets and other interior open spaces, a quality also to be found in many irregular plans." The same characteristic may also be attributed to Renaissance planning.

Perhaps few readers will see as clearly as does the author the significant influence of many early planning developments on modern town and city planning. The fact remains, however, that some of these early practices are still prominent features of many city plans today. The common chessboard pattern of street layouts, for example, may be traced back to Chinese, Egyptian and Indian cities.

Modern city planning is so complex and so technical that it is practically impossible to appraise it in comparison with the simpler, piecemeal planning of the past. The author's discussion of the Aims and Methods of Modern City Planning in America (chapter XII) and The Future of City Planning (chapter XII) are convincing in this respect. We have recently recognized the urgent need for national, state, city and regional surveys in order to ascertain the social, economic and physical facts indispensable to scientific and purposeful planning. The basic data collected by these agencies must be co-ordinated and interpreted by experts before being put to practical use.

The author points out that the development of city planning as an art will depend upon the skill of those who practice it. City planning as a science is in its rudimentary, experimental stage at the present time. Its advancement beyond this stage depends upon the extent to which community leaders and the public in general are willing to sacrifice immediate individual gain for the common good. Its success as a movement of policy depends upon the vision and courage of civic and political leaders and their ability to rally the public to their support.

Professor Adams has shown that in many instances in the past the inadequacy of planning has been due to the selfishness of real estate promoters, industrial leaders and others who should have been leaders in civic affairs and community development.

The author has further described the inadequacies of many of our state and local laws, and has shown that their readjustment to present needs is imperative if town and city planning is to be effectively executed. The means to the end is a thorough and systematic education of public opinion.

A tremendous amount and variety of material has been compressed within the narrow confines of a 368 page book. Many topics have been briefly introduced which would doubtless have been more interesting if treated at greater length. Nevertheless, the author has made a valuable contribution to the literature of town and city planning in this "outline", and it should be carefully read and digested by the many students and civic leaders who are interested in the orderly development of community life in an age of confusion.

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CASES ON MUNICIPAL CORPORATIONS. By E. Blythe Stason. West Publishing Company, St. Paul, 1935. Pp. xxix, 761. Price: \$6.00.

In view of our system of case law, a satisfactory case book on the subject should present the main principles and precedents of municipal corporation law as they have developed and exist at the time of publication. Usually late cases best show this, but it is true nevertheless that many of the earlier cases, and numerous ones determined in the last and the opening of this century present these principles and precedents equally well, and some of them often better. At any rate, as concern fundamentals, the latter group of decisions are commonly terser, more direct and less prolix in expression and frequently better supported by apt illustrations and examples, but in argument, generally speaking, more extended and less dogmatic. Perhaps dogmatism is a characteristic of modern statement, certainly legal both in decision and text. It should be understood, however, that this dogmatism is in keeping with the times, and displays mainly feeling and emotion rather than reason and conservative statement, the custom of the older judges, jurists and lawyers.

In addition, under our system of case law, cases that have been instrumental in the application of principles to facts growing out of the urban conditions continuously changing and developing and which because of their clearness, learning and soundness have become precedents should be included.

To know the municipal corporation and its everyday operation, both theoretical and practical knowledge is required. The working of the city or town is something quite apart from political or governmental doctrines, legal theories, the charter and applicable laws.

Municipal corporation cases present the law relating to incorporated cities and towns and urban centers in the concrete or the law as it is applied, better than text or comment can. Text of the book student, teacher, academician or professor is likely to be overburdened with abstract legal theories, with little or no application to facts of controversies as they are presented to courts for decision. The law is practical and designed for use by men in their constant relations with one another in social, economic, public and private affairs. It can be known only by understanding how it operates and is applied by the tribunals set up by society to make the application. The principles announced by the cases, in view of the particular facts, become the applicable rule of law and, under our system of case law, authoritative. Moreover, the case if well decided may become a precedent to direct controversies thereafter arising.

Municipal corporation law is one of the most extensive fields of substantive civil law, and cases on the subject show the daily concrete application of its principles and precedents to the social, economic, industrial and public life of residents of cities and towns or urban centers. The number of such residents is increasing and constitutes at present more than half of the inhabitants of continental United States. Moreover, municipal corporation law is interwoven, more or less, with all branches of the law. This may be said also of every department of the law. No one subject or department can be sharply segregated from any other.

General principles applicable alike to all municipal corporations of this country are set forth in the cases and notes, but it should be mentioned that each state, and particularly the older ones, has to a large extent developed its own system of municipal corporation law, but in the main, it is nearly alike in all the states, especially as to fundamentals. In the present publication this has been definitely kept in mind in the selection of the cases. There has been an effort made to show the vital relation between the growth of cities and the law. There are recent cases on the ever expanding scope of implied powers, legislative control, local self-government, home rule, the attitude of courts toward municipal

tort liability and its gradual extension, the steady development of zoning and city planning. The important subject of municipalities in their contractual relationships is illustrated by a large number of cases which seem well chosen.

An introductory note treats generally of the classification of municipal and other public corporations, the relation of the municipal corporation to the state, and its citizens, the general structure of municipal government in the United States, municipal functions, and municipal officers, including elections, appointments, civil service and the merit system.

The cases set out all told number one hundred seventy-four and cover these general subjects: legislative control over municipal corporations (7), legislative control of corporate boundaries (8), general municipal powers (12), municipal action to promote public welfare, including (a) city planning and zoning (14) and (b) public health and safety (8), license and license tax (9), franchises (5), appropriation of municipal funds (18), municipal contracts (18), municipal indebtedness and debt limit provisions (23), municipal torts, including actions for defective and unsafe streets (24), municipal property and actions incident thereto (17), and special assessments or special taxation for improvements (11).

For the purpose of comparison of cases in this and other recent publications on cases of municipal corporations, it ought to be noted that one hundred thirty-three cases appear in this work that are selected for the first time. There are one hundred sixteen cases which were decided since 1900 and fifty-eight which were decided prior to that time. This would seem to show a nice balance of material giving ample space to the principles as early developed and at the same time emphasizing the law as it is today.

Cases relating to general municipal powers are preceded by excerpts from charters and text, setting them forth.

Incidental topics, illustrating the application of principles and precedents of municipal corporation law and details, appear in the cases, many of which are annotated in part and will prove of value. In the footnotes the cases are so arranged as to amplify the principles set out and to serve as precedents. Digests of the authority given is pointedly and concisely presented. In addition the book affords the reader an opportunity to pursue the subject further afield on topics such as economics, and political science, topics toward which the student of the law and legal practitioner should not be altogether strangers.

In an endeavor to make accessible the many aspects of a subject, such as the one treated in this work, a good and sufficient index must afford the necessary information as to the contents of the cases. "An index", it is said, "like a book, may be amusing with numerous errors, or it may be very dull without a single absurdity." It should be the key to the treasure within the volume, accurate without being unwieldy, adequate without being too brief. The treatment given to the index of this book indicates the same degree of care and foresight rendered throughout the work. It ought to supply, adequately, the purpose for which it is intended.

The table of contents sets out precisely the subject-matter of cases included. The type, catch-words, key devices and display of skill in the mechanical execution of the work are useful and attractive.

Viewing the book as a whole and by parts, it is the latest work on this subject, and is distinctly a contribution to legal learning in the field of municipal corporations. It will be of value not only to the student as an aid in the subject which it is designed to cover, but also to the legal practitioner as well.

Eugene McQuillin.†

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BOOK NOTES

BY PACIFIC MEANS. By Manley O. Hudson. Yale University Press, New Haven, 1935. Pp. 200. Price: \$2.50.

This brief volume contains addresses delivered at the Fletcher School of Law and Diplomacy on the implementation of Article Two of the Pact of Paris—"The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means." Within the space of 100 pages it reviews the Hague Conventions, the Permanent Court of Arbitration and other means of peaceful international settlement which existed prior to 1914, and discusses the workings of the League of Nations, the World Court, and a multitude of treaties concluded since 1920. There are appended 87 pages with texts of illustrative and germane documents.

Professor Hudson makes it clear that much of the machinery necessary to resolve international disputes with due process of law has already been constructed. It has even functioned effectively in numerous cases, and it is probable that some hundreds of people owe their lives to arbitral and judicial interventions by the League and World Court. Nevertheless, on the basis of past performance, it may be surmised that all the agencies for pacific settlement so far devised will fail to cope with serious international crises. The usefulness of any machinery depends on the men who control it, and most people will find it impossible to recall offhand any diplomat who has betrayed serious disposition to sacrifice the traditional interests of his nation for the sake of preserving world amity. Is it necessary to mention that Japan and Italy were original members of the League of Nations and signatories to the Pact of Paris?

Professor Hudson is not under too many illusions as to the value of the instrumentalities he describes. But it is questionable whether the optimism he displays is justifiable in view of our present organization of fundamentally antagonistic national interests making up what G. Lowes Dickinson has expressively called "the international anarchy". If peace is to be maintained, one might say restored, one will have to begin by striking at the roots of war rather than by merely seeking to adjudicate the spasmodic disturbances springing from the roots.

Meanwhile, until the next great conflict, Professor Hudson's book will remain an excellent and useful treatment of an important and melancholy topic.

DOCTORS AND JURIES. By Humphreys Springstun. P. Blakiston's Son & Co., Inc., Philadelphia, 1935. Pp. 155. Price: \$2.00.

The author of this volume is an attorney who apparently has had an extensive experience representing physicians in malpractice cases. Therefore, as is to be expected, the book is chiefly concerned with the legal problems arising out of malpractice cases. While purporting, from the preface, to be a medical guide for lawyers as well as a legal help for physicians, the book is almost completely devoted to the latter phase. Consequently, an attorney will find the work of little use. In very general—sometimes dangerously over-simplified—terms, the author explains the basis for the physician's liability, the standard of care required of him, and the damages entailed by careless treatment of a patient. The book then continues in the same vein, describing in virtually chronological order the steps involved in the preparation and trial of a malpractice case. A brief section on insanity completes the work. Such medico-legal topics as rape, asphyxiation, cult practices, poisoning, sanitation, malingering, inebriety, narcotic addiction, sex perversions, *etc.*, are disposed of by the following: ". . . in such cases the only guide the doctor needs is to examine

carefully and thoroughly and to testify fully, frankly and honestly . . ." The book doubtless has value to physicians in pointing out the general bounds of safe conduct in the doctor-patient relationship.

LAWLESS JUDGES. By Louis P. Goldberg and Eleanore Levenson. The Rand School Press, New York, 1935. Pp. x, 303. Price: \$2.50.

"Judicial power is merely the organized power of one class for oppressing another." This adaptation of Marx's familiar definition of the State might well be used to express the thesis of the two very angry people who wrote *Lawless Judges*, an indictment, itself biased, of the judiciary, charging that it is motivated solely by biases engendered by the desire to preserve present economic and social institutions. The book, after discussing most of the causes célèbres lost by labor, as well as many less well known incidents of judicial disregard for the Bill of Rights, amplified by appropriate comments from secondary sources, concludes: "Our judiciary has practically become the dictator of the American people. The dictatorship must be abolished."

Strikers are consistently portrayed as meek, martyr-like fellows, to whom force is as abhorrent as it was to Tolstoy, and against whom courts, employers, and "scabs" have entered an unholy alliance, the purposes of which are most effectively promoted by the judges who, to crush the proletariat, deliberately and lawlessly defy precedent, statute, and constitution. The chapters devoted to judicial review and to the suppression of civil liberties are more impartial, and evidence a less faulty knowledge of the law. They are also better written, being unmarked by the abrupt, breathless style of the first part of the book. But they are equally critical, sparing not even Justice Holmes, who is condemned because of his refusal to invade the legislature's discretion by declaring unconstitutional statutes opposed to the interests espoused by the authors. Essentially therefore, *Lawless Judges* is not an attack upon judicial dictatorship as such, and indeed, is a defense of it when it fosters the causes supported by the writers.

In comparison with the rest of the book, the introduction by Professor Morris R. Cohen gains forcefulness by its restraint and by its emphasis upon the social forces focused in the courts' decisions rather than upon willful venality. Professor Cohen clearly indicates the undesirability of the judicial determination of constitutional questions which are really political in nature, since such determinations involve subjective judgment to a much greater extent than most other fields of law.

Unfortunately, however, much of the criticism of judicial prejudice is valid, and the indignation of a sympathetic person is readily understandable. Many cases are cited in the book in which the lower courts, especially, have suppressed the rights of Communists and anyone else who dared to deviate from the accepted mode of thought. Much desirable legislation has been invalidated by courts which were unreasonably loath to believe that legislators might be reasonable men. But the courts have not been solely to blame. Vigilantes, Legionnaires, and mobsmen of every variety, often constituting a majority of the populace, have frequently terrorized minority groups. A judiciary, made more responsive to the popular will by recall and a simplification of the process of impeachment—proposals advocated by the authors—would not be much more likely, for example, to give Tom Mooney a fair trial with the present state of popular opinion in California. A Socialistic society, the ultimate remedy suggested by the writers, may reduce in some measure the amount of policy-making litigation before the courts and the pressure of egoism upon the judges, but it is a goal which seems to be very remote, and that it will alleviate all the ills of intolerance can be the opinion of only the most optimistic of economic determinists.

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