

## BOOK REVIEWS

*Principles of Railway Transportation.* By Eliot Jones, Ph.D. New York, The Macmillan Company, 1924. pp. viii, 607.

The title of this book, *Principles of Railway Transportation*, does not indicate with exactitude the character of the contents. A more accurate title would be a history of railroad legislation and administrative control in the United States with a discussion of certain American railroad problems and the inclusion of a summarized theory of rates and rate-making. The space devoted to rates and rate-making is less than one-fifth of the entire volume.

After a rather cursory appraisal of the economic importance of the railroad industry, there follow: first, a so-called financial introduction descriptive of various types of American railway securities; and second, an historical introduction explanatory of the growth of the American railway net, chiefly by decades since 1830. This prefatory matter covering about 70 pages is clear, well arranged and, so far as appears from examination, is accurate but not novel.

Part II, devoted to Rates and Rate-Making, is a presentation of the more or less conventional theory of railway rates, emphasizing such standpoints as increasing returns, joint costs, constant costs and differential charging.

The author condemns differential charging, or "charging what the traffic will bear," in the sense of "fixing the rate on each individual commodity at the point that yields the maximum net profit" (p. 88). On the other hand, differential charging, that is, the adjusting of charges on different commodities so as to obtain the maximum utilization of the railway plant, is declared to be sound and in the public interest. Passing over the author's assumption that railroad transportation always presents a case of joint costs, and never one of alternative costs, the criticism may be ventured that he does not live up rigorously to his own logic in this matter of differential charging.

So long as the maximum net monopoly profit on each commodity is avoided, Mr. Jones approves charging more per 100 pounds of silk than on 100 pounds of junk for the same haul. The junk could not pay the silk rate; and so long as the junk affords more than the extra cost specifically incurred on account of the carriage of the junk, the difference in charges, despite possible equality in costs, results in more goods being transported and in a fuller utilization of the railroad plant. But if, on this basis, silk may properly be charged more than junk, why may not local non-competitive freight be charged on a higher level than competitive freight? If the competitive freight were raised to the level of the local or non-competitive freight, some of the competitive freight would not move. "Yet there is no reason to believe that local discrimination causes the facilities of the carriers as a whole to be more fully utilized. . . . Low rates, of course, do increase the volume of traffic, but discriminatory rates do not" (p. 110). But discriminatory rates imply the existence of low rates at preferred points; and, as the author says, "low rates, of course, do increase the volume of traffic." It would seem if, from the same point of origin, low rates on junk and high rates on silk tend to maximize the volume of freight carried, that on the same principle, low rates on competitive freight and higher rates on non-competitive freight might also tend to maximize the volume of traffic carried. Doubtless there may be a degree of local discrimination that is both economically unjustifiable as well as unlawful, but the trumpet in the text gives forth an uncertain sound.

The treatment of personal discrimination leaves much to be desired. To say that "if we really want to abolish the rebating evil, we shall undoubtedly have to abolish private cars" (p. 123) does not carry any evidence of the knowledge that

the mileage allowance on private cars is generally less than the interest, sometimes less than the annual repairs, on these cars.

The discussion of Rate Systems is incomplete, and in parts erroneous. The omission of the Southwestern rate structure, and of the whole basis of Texas rates is remarkable. The impression is certainly conveyed that in what is called The Trunk Line Rate System there is no violation of the Fourth Section. We are strongly of impression that even between Central Freight Territory and New York City there are countless violations of the Fourth Section where certain indirect lines pass through higher percentage groups in order to reach destinations in a lower percentage group. There is no description in the text of the Rate System applicable wholly within what the author calls "eastern trunk line territory" (p. 149). At the close of the discussion of the Transcontinental Rate System (p. 182) it is said:

"The long and short haul principle thus continues, as after 1918, to be observed in transcontinental territory, though rates to the Pacific Coast terminals from points east of the Missouri River are still blanketed as already explained."

This statement, taken in its context, seems unmistakably to imply that from the Atlantic to the Missouri River, uniform rates prevail to the Pacific Coast terminals, irrespective of the point of origin. If this be the interpretation put on the paragraph, it is erroneous. It is true that the Pacific Coast terminals are generally blanketed on traffic from the east. The rate from Cleveland to Portland or San Francisco or Los Angeles would normally be the same. But it is not true that the rate from Cleveland to the three terminals is the same as from New York or from Chicago to the three terminals. On westbound transcontinental traffic the territory on and east of the Missouri River is divided into ten groups known as A, B, C, D, E, F, K, L, M and N, the rates from which vary according to the group; except that, generally speaking, groups A and K (Atlantic Seaboard), take the same rates; groups B and L (Pittsburgh, Buffalo, Atlanta) take the same rates; and groups C and M (Cincinnati, Birmingham, Ala.) take the same rates.

The larger part of the work is a discussion of railroad legislation and administration. While this part of the text is generally a useful, intelligent and well-balanced analysis, there are traces of its not being thoroughly synchronized. It reads as though written up on an annalistic basis, and then imperfectly connected up at a later time by cross references and inserts.

Among the specific problems treated is the valuation of railroad property for purposes of rate-making. The author is an advocate of original cost; and believes that even though original cost as a fact cannot be ascertained, an estimate of original cost of the property still in use is the best basis of valuation. Assuming that in 1920 it was compatible with sound judgment to make needed additions, such as equipment, to a railroad property, is the shipper to be held for a generation to pay rates affording a return on box cars at \$3,000 a car, even though ten years later the cost of the same car new is but \$1,500? This does not seem quite self-evident.

Perhaps the best chapter in the whole book is that devoted to Government Ownership and Operation. The various considerations, *pro* and *con*, are fairly and intelligently marshaled. They are tested discriminatingly and in the light of the essentially relevant facts. No conclusion is reached, but the materials of an enlightened judgment on the matter are so handsomely indicated that the discussion is to be highly recommended. Perhaps no fairer delineation of the matter has ever been made.

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*Law and Morals.* By Roscoe Pound. Chapel Hill, University of North Carolina Press, 1924. pp. iv, 156.

"A history of juristic thought in the last century must precede an effective science of law for to-day." Thus the author's preface. In the present lectures Dean Pound leads up to the thought of the historical, analytical, and metaphysical schools with a summary of Western legal philosophy in the preceding centuries. He proceeds to a presentation and critique of the three schools named, comparing and contrasting their views of the nature and growth of law, and indicating in each case the incompleteness and impermanent character of the theories and their adaptation to the legal conditions of their own day. The presentation of the various views discussed is dispassionate, buttressed by ample citations, and accompanied by useful illustrative quotations. At times, as with the historical school's view of legal development as the unfolding of an idea, the author shows laudable patience with a curiously unrealistic conception. In a number of places the author's own philosophy of law is suggested, but nowhere developed. References are, however, made in appropriate places to the previous writings in which his thought has been developed more fully. The book contains little not already familiar to those who have followed the author's work, but is an excellent introduction for others, and a useful handbook in any event.

As a discussion of the relation of law and morals, however, the reviewer finds it lacking, and lacking in a serious matter. The nature of law is discussed at length and with much care. But the nature of morals is hardly discussed at all. The distinctions taken by various writers between the two are set forth, but only incidentally. It is shown that the *Sitte* of German discussion differs in intent from what we would speak of as morals. But what the author means by morals, and the genesis and working of such morals as agencies of social control, are passed over in silence. Yet this seems to the reviewer quite as difficult and pressing a problem, and one to which the 19th century made equally valuable contribution. One gathers from the book that at all times to some extent, and in periods of rapid legal growth to a particular extent, law borrows from morals and gives legal sanction to norms and standards non-legal in their origin. These latter, or various of them, are spoken of at times as ethical, at times as moral, at times as customary. But to assume any definite meaning in any of these terms seems quite as unwarranted as to assume a definite meaning in the term law, before defining it. It should follow, and to this reviewer it did follow, that the interest and value of the lectures do not lie in the light they shed upon their titular subject.

The bibliography covers some thirty pages, to which must be added the author's own works cited only in the footnotes. The references are to chapter and verse. The range of reading covered is amazing, and to the less learned, disheartening. Most of the books or authors are concisely described or classified: Vinogradoff: "Kantian"; Jellinek: "psychological, analytical, social-utilitarian"; Parsons: "social-utilitarian, analytical." The classifications, so far as the reviewer had background enough to check them up, were admirable. Almost too much so. A perusal of the bibliography leaves one wondering whether so pretty an alignment can do justice to stubbornly irregular facts.

Of the text, too, much the same may be said. Dean Pound is of those who believe that scholarship and philosophy are wholly compatible with the making of literature. We are not used to this in American law, and the unusual arouses not only interest, but suspicion. The style is graceful; the argument flows smoothly; the generalizations are exceedingly persuasive. The immediate reaction is, that something must be wrong. In reading Holmes such suspicions are quickly allayed by the discovery that the author's art is directed primarily to stripping the husks off the issue under discussion. In reading Cardozo the

suspicious die in proportion as one observes that the issue is narrow, and the argument in large part a contribution from personal experience. But the sweep of the present little volume is wide, and the generalizations far-reaching. In this unlettered age the very neatness and finish of the writing must lead to hesitation in accepting the conclusions. That is unfortunate. Art and truth not only can, but should, be mated. But though distressful, such suspicions need not be permanent. Where sound, conclusions will prove out as readers test them. Meantime, Dean Pound has taken another step toward establishing an ideal much to be desired: that scholars who learn to read should also learn to write.

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*Handbook of the Law of Principal and Agent.* By Francis B. Tiffany, Second edition by Richard R. B. Powell. pp. xiii, 485. *Illustrative Cases on Agency.* By Richard R. B. Powell. pp. x, 405. St. Paul, West Publishing Co., 1924.

Although the Handbook, one of the Horn Book series, is issued as a second edition of Tiffany, it is practically a new work. Professor Powell has succeeded admirably in producing a succinct statement of principles and an analysis of the subject which is particularly helpful where decisions are conflicting or the reasoning of the courts not satisfying. One does not have the feeling which frequently comes after reading brief texts that the writer has stopped where the difficulties begin. The text shows that the work done in the subject in recent years has been assimilated, and the references in the notes to practically all of the law review articles makes it of especial use to the student and that portion of the profession which is willing to utilize them. The book can be heartily commended.

Perhaps only two matters call for especial comment. One is the introduction of the "Entrepreneur Theory," by which it is suggested that tort liability for the act of a servant, as between two possible masters, be determined by finding "whose work was being done" at the time of the injury instead of finding who was in control, the test generally used. Aside from the question as to whether the proposed test is more workable than the older one, depending as it does upon vague economic factors, it may be doubted if its label will recommend it to the courts.

Great emphasis is placed upon the distinction between "power" and "authority." This, I think, aids considerably in the exposition of the subject. Although the distinction has always been made, the courts have used the two words more or less interchangeably, and have used authority with a variety of meanings. It would have added somewhat to clearness, for student use at least, if the author had defined, as well as contrasted, them. In Section 17, for instance, headed: "Ability of agent by his own conduct to enlarge his power to bind principal to third party," it is not altogether certain as to what is meant by "power."

In the accompanying case book, intended for schools using the text and case method, the cases are interesting and well balanced. The compiler has avoided the temptation to unduly cut the cases in the interests of space saving. The minuteness of the sections and the order of the cases are obviously the result of the combination with the horn book.

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