

BOOK REVIEWS

CASES AND AUTHORITIES ON PUBLIC UTILITIES. By G. H. ROBINSON. Chicago: CALLAGHAN & Co. 1926. pp. xxiv, 976.

CASES ON THE LAW OF PUBLIC UTILITIES. By YOUNG B. SMITH and NOEL T. DOWLING. Including CASES AND READINGS ON RATES. By ROBERT L. HALE. St. Paul: WEST PUBLISHING Co. 1926. pp. xxvii, 1258.

Many features of these important and suggestive casebooks will appeal to law teachers. The reviewer is especially attracted by the tendency shown to a certain extent by each to look for a new integration of the subject matter here presented. This he intends to consider later in these pages. But first, some general account of the books is desirable.

Immediately one is struck by the bulk of the material offered by these two casebooks. Professor Robinson's collection numbers fewer pages than that of Messrs. Smith and Dowling; and yet the voluminous notes make the bulk of the material seem fully as large. But as all teachers of public service law will doubtless expect, in each book large portions of the field have been left comparatively untouched. The reviewer felt that he had lost an old friend upon discovering that Professor Robinson, unlike Professors Smith and Dowling, had only a very limited amount of material on the long contest between shipper and carrier as to limitation of the latter's "insurer's liability," and no account at all of the *dénouement* of the struggle under the Second Cummins Amendment, where the Supreme Court has at length evolved the principle of supervised bargaining between economic groups, in place of individual contracts between shipper and carrier. One finds in both books a complete omission of the subject so important to our transportation companies and to the regulatory commissions, the matter of the making of individual tariffs. And finally, except as Dr. Hale has included them in his chapter on Rates, neither book attempts to go into the decisions of the bodies who are most responsible for the success of state supervision of private industry, namely, the state utilities commissions, and the Interstate Commerce Commission. Omissions of this general kind are to be expected in view of the extent of the subject. The question of selection then becomes a highly important one about which various teachers undoubtedly will have different views. Since, unless the course is to be greatly extended, there must be a rigid selective process, one may ask whether our theory of selection may not well be changed to justify yet more radical omissions coupled with a rearrangement of course material.

The number of law review and other articles in these fields is impressive. Professor Robinson has done a distinct service in giving a table of such material arranged according to his chapters. It is interesting to note how citations on the question of rate regulation—a question unfortunately over-emphasized by the resolute refusal of the Supreme Court to view it realistically—bulk so much larger than those on any other topic. This is but another indication that evasion of an issue by the courts in the long run increases rather than lessens their labors.

The result is, therefore, that from either casebook any teacher of public service law who desires to follow the lines now conventional in presenting the subject will find full ammunition for a complete and extensive course. The

books fill a real need, both because the nature of the subject is such that modern, even last-minute, cases are absolutely essential, and also because the possibilities of differing arrangements of the material are by no means exhausted. Each has special features which may recommend it to a particular instructor, though it is hardly possible to express a definite preference until the test of class room use has been made as to each.

Special mention should be made, however, of Dr. Hale's selection of authorities on rates. The material is excellently chosen from the whole engineering, economic and legal field which concerns regulation, and it is put together in a most illuminating fashion. Dr. Hale's own contributions to the clarification of the subject are well known views. In his selection of cases he has no hesitation in disclosing his own conclusions. In fact, a part of the pleasure in reading the section is to observe the manner in which, by a deft suggestion here and there, he calls attention to the weakness of a judicial quasi-economic statement. Some may feel that a case editor should never appear as an advocate of a particular view, but the reviewer is bound to say that this chapter is important evidence to the contrary.

Professor Robinson often adds a mellow touch to his footnotes by a dry turn of language, or a humorous phrase, which generally seems apt. Thus he says (p. 321) that Professor Edgerton in his article on "Value of the Service as a Factor in Rate Making" points out "the conflict in the two ideas (of rate-making) which are thus seemingly made to flap together," and he refers to the telegram in the famous Ferguson case as being a "Macedonian call."

The appearance of these books affords an opportunity to speculate upon the further development of methods of teaching this subject. It is interesting to compare the arrangement of materials in these collections with the classical method, so far as there may be considered to be one in this field.

It is usual first to consider the basis of the public service obligations, which involves an historical development of the subject; then to set forth the various public service duties, such as the service to be rendered, the rule-making functions of utilities, the duty not to discriminate, the duty to serve with adequate facilities, the regulation of rates and the withdrawal from service; and, finally, to conclude with separate chapters on common carriers and innkeepers. This general outline is more nearly followed by Smith and Dowling than by Robinson. Yet they, too, have made a more closely knit development by using the carrier and innkeeper cases together with and not apart from the general public utility cases. Professor Robinson goes further towards a new orientation. He centers his course about the presentation of various aspects of what he terms "the public utility concept." In his first chapter he obtains a fairly striking antithesis under the heading "The Property Concept and the Public Utility Idea." His entire body of material is divided into three parts. Part one is a development of the public utility idea; in part two are stated the obligations of the public utility status and their enforcement; while in part three are given the "duties of performance owed to individuals for whom service is undertaken."

These are suggestive rearrangements of material, but in general all within the limits of the public utility field as previously limited in other casebooks. May we profitably go further and cut across present course limits? And specifically how will our arrangement be affected by the approach, now termed—under our inveterate lawyer-like tendency to label everything we do—the "functional" approach?

The reviewer does not assume to be able to answer these questions, but he is moved to speculate a little on them. First some consideration of pedagogical aims seems essential. While we like to flatter ourselves that we are especially concerned in teaching our students how to think, we must admit that the primary value of many courses is the information they purvey. The course in public service law seems of this latter type. The cases are for the most part interesting and absorbing, since they involve many of men's fighting faiths; the economic and social problems presented are profound; but an understanding of the *legal* case presented is usually not a matter of difficulty. Now any realignment of materials along functional lines will still result in a course of great informational value. It should, however, greatly stimulate the analytical nature of the course, not a mere analysis of cases, but rather an analysis of "institutions," in the economic sense. The opportunities for such analyses seem particularly fascinating, for here we have a fundamental clash of interests in which all persons are involved. It is the struggle between producer and consumer; between business man and politician; between supporters of *laissez faire*, and of state paternalism. Do our commercial law colleagues worship a new deity, the "Business Community"? Perhaps at the same time we teachers of public service law are also serving another divinity, the "political state," or the "common people." But a battle between gods is always interesting.

Further, any such selection of materials is likely to be more along individual lines developed by the editor than is the case at present, when the compiler's main objective is merely "to cover the subject." The casebook editor must hereafter develop his own subject, or his own thesis, and integrate his material around it. He may then seem to be proving a definite proposition of economic or political theory. This, however, is not a defect, as Dr. Hale's chapter on Rates, discussed above, abundantly shows.

One result of this is that much of the material now considered necessary to the course will be definitely discarded. For example, the cases on the power of the utility to make rules for its service seem of little usefulness. Again the matter used will be broken up into several different courses. Just the content of such courses is a matter definitely for experimentation. Thus, a course on marketing, describing the economic institutions involved in marketing products, might include a discussion of transportation costs as affecting prices. This would give occasion to consider the material on railroad tariff-making, usually wholly omitted in the course (except where Professor Frankfurter's collection of cases on the interstate commerce act is used). The struggle of various sugar growers in widely separated districts to secure equality or more than equality in the Chicago market through the application of the "long and short haul clause" is an example. Cf. Rates on Sugar, 31 I. C. C. 511. The effect on the tariff rate of the distance the article is carried, of competition between cities and communities on the one hand, and carriers on the other, of the nature, size and bulk of the article and its probable market, is a further example. Or a course might more directly emphasize the regulation and supervision of the marketing process. In other words, this well might be a course in "trade regulation," without leaving out the most important forms of regulation, namely commission regulation. Such books as J. M. Clark's *Social Control of Business* point the way. The possibilities of ideas about which to integrate a course of this general type are many. Thus, it might be built along the line of showing the analogies of public and administrative law, although the economic approach seems much

the more fruitful. Another course might be suggested to develop the investment possibilities of public utilities compared with other industries and such a course might well discuss the rate-making problem broadly against the background of other forms of organization. The emphasis in all these will naturally be upon a similarity, not of legal principles, but of fact-transactions viewed in the light of the editor's idea.

And so the reviewer welcomes these casebooks both for the additions they actually make to present teaching tools and for the augury they disclose for the future of new endeavors to understand and interpret these fields of law and politics. Let us hope that the editors, or other teachers of these and allied subjects, will be stimulated by these volumes to further experimentation.

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INTRODUCTION TO THE STUDY OF LAW. By EDMUND M. MORGAN. Chicago and New York: CALLAGHAN & Co. 1926. pp. 187.

This book is the product of a number of years' experience in the presentation of introductory material, relating particularly to court procedure, to students entering upon the study of law. Professor Morgan discusses in successive chapters the court system as it developed in England, and as it exists in the United States; the nature and sources of the law; main topics of the law; the various steps in the beginning, trial and appellate review of an action; the importance and nature of the common law forms of action, with an outline and examples of pleadings; the preparation by a student of case material for class discussion; and the various repositories of the law, their purpose and utility. Finally there is an appendix giving the forms of the writs and declarations in the various common law actions, and there is a good index. The chapters make very interesting as well as informative reading; and although, because of the avowed purpose of the book, they are not exhaustive, the discussion is an excellent beginning for further study. Moreover, there are a considerable number of references to other more detailed treatises. It would, perhaps, have been well if these references to other materials were even more extensive.

The book will have a special efficacy in connection with the beginning procedure course. To understand the actual decisions in the cases in substantive law casebooks, the student should have exact knowledge of the procedural devices involved in the making of such an appellate record as that which the court is passing upon in the case in the book before him. In this connection, it is important to bear in mind that practically the only material used by the student in acquiring a knowledge of law in a law school is the decided case, and the decided case in an appellate court, not the decided case at *nisi prius*. The student will the more easily understand the trial and appellate procedure involved in the decided case if he has in his mind at the start a bird's-eye picture of the general way in which an action is begun and carried through the courts. In other words, the beginning procedure course of the future may well consist of an introductory background such as is sketched in this book; a brief consideration of the procedural devices used for the presentation of questions of substantive law for decision by the trial and appellate court—that is, of demurrers, objections and exceptions, and the trial motions; and finally of the pleadings in the actions.