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Book Reviews

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BOOK REVIEWS

REGULATION OF PUBLIC UTILITIES—A CRITICAL PROBLEM IN CONSTITUTIONAL GOVERNMENT. By Cassius M. Clay. New York: Henry Holt and Company, 1932, pp. xi, 309.

Mr. Clay's non-technical treatise on public utility regulation is a timely discussion of an important question. As public attention is focused on the regulation of power companies, the author has put his emphasis upon those utilities rather than on carriers, a departure from the practice in the past. The author at the outset makes it clear that he is arguing neither for nor against the utility companies. He frankly states in his preface that his thesis is "that public regulation, at least of electric utilities, should be left, so far as is compatible with the national interest, to the separate states." His arguments to support this thesis are sound and support his position. Possibly he might have strengthened his position further by drawing an analogy between the regulation of power companies and of railroads and emphasized the lesson to be drawn from government regulation of the latter. He might have shown the disastrous results from over-regulation during the depression and have suggested that it is not the province of public commissions to over-step the line of demarcation between regulation and management of privately owned public utilities.

The author is clearly right in his position that rate-making is primarily a matter of economics and that "the rate-payer suffers equally with the investor if rates are fixed too low from a business standpoint." The present depression has clearly shown that a corporation must be allowed in prosperous times to acquire a reserve to take care of such periods of strain. Furthermore some utilities are entitled to higher rates than others since the depreciation is greater in some than in others.

The author shows a preference for the "prudent investment" basis for rate-making and very astutely points out the difficulties and shortcomings of the "fair value" method, so much favored by the majority of the justices of the United States Supreme Court. He says: "Neither the court, nor any human intellect, can conclusively determine what the fair value of a utility property is. Subjected to economic analysis, the term appears in its true light, as conceptual prattle." This is rather strong language, to say the least. What the court is really doing under the "fair value" doctrine is to settle each case on its merits. The author's faith in the economist's ability to work out a method of ratemaking seems hardly justified by the help or rather lack of help that we have had from the economist during the present depression, either in forestalling or overcoming it. Of course there is much that can be criticised in the rate making and public utility

regulation of the past, but not all of it is to be placed on the court. Of the mistakes of the past, one might mention, for instance, the plan of the late Senator La Follette to evaluate the railroads, a scheme that cost our transportation system millions of dollars with little or no benefit in return. It is to be hoped that a similar experiment is not to be tried out on our power companies in the near future. In the last analysis the costs of such schemes are borne by the public either as investors or consumers. The "prudent investment" basis of rate-making is open to objections. As the purchasing power of the dollar changes a hardship is worked either on the consumer or the power company.

In the chapter on interstate transmission of power, the author has pointed out a gap between state and federal jurisdiction where under the ruling in the Attleboro decision the power companies today escape regulation. Where there is a bona fide contract between a transmission company in one state and a distributing company in another, neither state can regulate. This situation would seem to call for Congressional action. As the author suggests, Congressional permission can be given the states to exercise state authority in such cases.

One of the most interesting sections of the book deals with holding companies. That these companies have made "an indispensable social contribution of outstanding value" may come as a surprise to many readers. After considering these contributions, the author points out the dangers involved in such holding companies and suggests methods of regulation applicable to them. He does not, however, make it as clear to his reader as he might that regulation of holding companies is not really a matter of rate regulation but of supervising the issuing of securities and protecting the investing public. Rate-regulation affects operating companies and is more of a local matter.

Mr. Clay has written a very readable book on a highly technical subject. He makes available to the reader a lot of interesting data. The work could have been improved by the author's putting much of the matter contained in long quotations into his own words. The work should be widely read and since the author is a Kentuckian, it should be of especial interest to Kentuckians.

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CASES AND MATERIALS ON THE ADMINISTRATION OF DEBTORS' ESTATES.
By Wesley A. Sturges. West Publishing Company, St. Paul. 1933. Pp. xiv, 1141.

This casebook is designed to present the more important of the legal problems incident to the liquidation of debtors' estates. The casebook is more than a selection of cases on bankruptcy. Included in the compilation are cases on compositions, assignments for the benefit of creditors, receiverships, and bankruptcy. Each of the above methods

of liquidation is presented as a separate technique. Co-ordination and combinations are suggested.

This casebook marks a new treatment and re-arrangement of these materials. Without having had an opportunity to use it in the classroom, it is impossible to fairly appraise it. The publishers state that the materials, in mimeographed form, were tested in a four-hour course in three law schools before publication. The reviewer has taught bankruptcy several times with two hours at his disposal. He has found it impossible to cover the material on bankruptcy alone in that time. Certainly, he would not wish to attempt to cover the materials in this casebook in two hours a week for a semester. Whether time can and should be found for a three or four-hour course on these materials is questioned.

Various materials other than cases are inserted in the compilation. The casebook both as to materials and arrangement is an experiment. Such experiments are interesting and of value.

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THE AMERICAN TRANSPORTATION PROBLEM. By Harold G. Moulton and Associates. Washington, D. C., The Brookings Institute, 1933, pp. Ixix, 915.

The American Transportation Problem presents the results of the researches made by Doctor Moulton and his associates of the Brookings Institute in preparation of the report of the National Transportation Committee, popularly known as the "Coolidge Committee." The report of that committee is given in full.

As its title suggests, the work deals not only with the railway situation, but also with water, highway, air transportation and pipe lines.

The authors have made a real contribution in correcting several misconceptions generally held in regard to public service corporations and particularly in regard to transportation. One is that companies greatly overcapitalize in order to secure higher rates and thus filch the public. The phrase "watered stock" has an altogether too familiar ring. As pointed out by the author, capitalization has nothing to do with the fixing of rates. It is not the basis on which charges are made. It is the property revoted to the public service that is entitled to a fair return and is the basis for rate-making. If a company were capitalized at a million dollars but owned and devoted only a hundred thousand dollars worth of property to supplying the public with electricity or transportation, it would be entitled to charge a rate that would give a fair return on the hundred thousand dollars, not on the million dollars. The so-called watered stock affects the investor rather than the consumer. If a company has an earning power sufficient to pay \$10.00 a year on each share of stock of \$100 par value, which would probably sell for around \$200; it is considered better to issue two certificates of stock, \$100 par, and pay \$5.00 on each. The market value would then be around \$100. A small investor would be

more apt to buy the stock so cut up than at the higher price. This would give a wider distribution of the stock with its advantages.

While the authors do not condemn the course followed by the Interstate Commerce Commission and would not agree with a recent contributor to one of our leading financial magazines that the Commission which originally cost a million dollars yearly but recently cost eleven million, has placed the railroads and most of the farmers of the United States in their present plight; they do concede the failure of its pet recapture clause of the Transportation Act, and point out the futility of the physical valuation of railroads under the Act of Congress put thru Congress by the late Senator LaFollette. Up to 1932 the government had spent nearly \$45,000,000 and the railroads approximately \$138,000,000 more in making the valuation and it is conceded it has "played little, if any role in the adjustment of rates during this whole period." (1920-1932.)

As to rate making, the authors conclude: "We have found, moreover that no single principle of valuation, either original cost (prudent investment), or reproduction cost, or market valuation of securities, can be used as a definite permanent basis of rate adjustment. We live in a dynamic world and we must accordingly have a pragmatic theory of rates."

The greatest contribution made by the authors, in the estimation of the writer, is in the "disillusionment" as to "cheap" inland water rates. Much has been made of the fact that the development of our inland waterways saves the shipper a fraction of a cent on a bushel of wheat. This does not take into account the burden assumed by the taxpayer in the original cost and maintenance charges of these water routes. The Federal government expended on these internal waterways over one and one-third billion dollars during the period of 1890-1931; and the state governments approximately \$330,000,000 more. It will take \$507,000,000 to complete authorized Federal projects. A careful comparison of waterways with railroads shows the former far exceed the later in original costs, maintenance charges and direct transport costs, and the carrying capacities of the latter are far greater.

The authors have brought to the attention of the reader some very interesting facts, some rather startling figures, as to the shift from rail to truck in certain industries.

Doctor Moulton recommends that "the various forms of transportation be placed on the basis of economic parity," that there must be a compulsory consolidation of railroads, and that there should be Federal regulation of all transport regulation of all transport systems; centralized, possibly, in the Interstate Commerce Commission.

This work presents a very valuable collection of facts and statistics; and will be of very great value as a source book on our transportation systems.

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CASES ON CONTRACTS. By Arthur L. Corbin. Second Edition. West Publishing Company, St. Paul, 1933, Pp. xix, 1304.

The second edition brings Mr. Corbin's admirable collection of cases up to date. A good many cases contained in the former edition have been omitted. New ones, carefully selected, take their places.

A new chapter, entitled "Remedies for Breach," has been included. There are quite a number of arguments in support of this move. For example, the subject of "damages" has been so neglected that the average student does not have an opportunity to study it at all. Nevertheless, one is in doubt whether "remedies" should be included in a casebook on the "substantive" law of contracts.

In many instances cases are followed by a number of "Questions" printed in a footnote. These are suggestive, helpful. Constant references to the Restatement of the Law of Contracts by the American Law Institute are not only an aid to study but assist the student in attaining a detailed familiarity with the Restatement. Such familiarity is essential to the lawyer.

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BLACK'S LAW DICTIONARY. Third Edition, Revised and Enlarged. By Henry Campbell Black. West Publishing Company, St. Paul. 1933, Pp. 1900.

Long recognized as a standard dictionary this new edition of Black's Law Dictionary, thoroughly revised and brought down to date, is timely. Hundreds of new definitions, reflecting changes and progress in the law, as well as many recent authorities for older definitions, will be found in the new edition. All materials in the volume were derived from decided cases. The new edition is forty per cent larger than the previous volume.

CASES AND MATERIALS ON CRIMINAL LAW AND PROCEDURE. By Albert J. Harno. National Casebook Series, Callaghan and Company, Chicago. 1933, Pp. lviii, 952.

While the "criminal law" has a fascination for more people than any other branch of the law, it has not received the respect and attention that should be accorded to it by teachers of the law. Perhaps the present situation in the administration of criminal law in this country can be traced in part to this fact. No other field of the law offers a more fruitful field in writing or reform. For that reason, the scholarly casebook of Dean Harno indicating thought and labor in this neglected field is most timely.

In addition to presenting the law of Crimes, Mr. Harno has attempted to present the clash of opposing views and theories, to point out the trends, and to show the way for improvement. This is constructive, is rather unusual in a casebook, and it is worthy of mention. Differing from other good casebooks on Crimes, Mr. Harno has at-

tempted to get away from generalizations on contempts and has treated each crime as a unit. This difference in approach is interesting and worth trying.

The chief criticism of this reviewer is in the limited amount of space devoted to Criminal Procedure. Only one chapter in thirteen is accorded to this important field. The substantive law of Crimes is increasingly important today; Criminal Procedure is more important. No casebook attempting to combine the two has devoted sufficient space and attention to procedure. The objection is balanced partly by a scholarly presentation of the problems in the substantive law of Crimes.

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STATE GOVERNMENT IN VIRGINIA. By James E. Pate. (Richmond: Appeals Press. 1932. Pp. 270.)

Professor Pate has rendered a commendable service in writing this book. The volume is not a great work of scholarship, but it should simplify greatly the task of any student who undertakes to familiarize himself with the government of the Old Dominion. It is particularly of interest to the legal-minded student of public affairs because of the emphasis it places on the constitutional development of the state. If this discussion is somewhat warped by the author's predispositions favorable to the outworn shrine of "state's rights," the fact will probably be overlooked by the student really interested in knowing something about the government of the state.

For several reasons the volume is of more than usual interest to Kentuckians who would be leaders in public affairs. (1) In the early period, Kentucky was a part of the commonwealth of Virginia. It was during this time, as Professor Pate shows in chapter ii, that, among other significant developments, "convention supremacy" was established in Virginia in connection with constitution-making. (2) In the process of revising governmental forms, Virginia has made more progress, especially as regards local government, than have perhaps any of the other states neighboring Kentucky. Moreover, precedents established in Virginia public affairs have a way of gaining the public ear in Kentucky which seems not to characterize similar developments in, for example, Ohio or Tennessee. This is a volume which in convenient and readable form sets out the results of the progress in structural changes which have occurred in the recent past in Virginia. (It is marred for this purpose, particularly as regards comparisons with other states, by dependence on hearsay evidence and by a failure on the part of the author to take advantage of all the available sources of information). (3) The economic situation and many of the other conditions governing political affairs in Virginia are not radically unlike those in Kentucky; hence the usefulness of acquaintance, which Pro-

fessor Pate provides, with the affairs of our neighbor for purposes of comparison.

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