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Review of “Cases and Materials on Corporations,” By Ralph J. Baker & William L. Cary

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BOOK REVIEWS

CASES AND MATERIALS ON CORPORATIONS. By Ralph J. Baker and William L. Cary. 3rd edition. Brooklyn: The Foundation Press, Inc., 1959. Pp. 1676. \$14.00.

The casebook is a puzzling phenomenon in the American legal world—and it scarcely exists (except as an import) any place else. In the popular (legal) mind, it is probably regarded as being simply a collection of reports of cases which involve the subject matter of some course in law school which a law school professor has pasted together and caused to be bound and sold for an outrageous price; a textbook with a clear and complete exposition of “the law” is obviously a much more developed piece of work, and one that is much worthier of respect; indeed, it may well be useful to a lawyer, whereas a casebook will hardly ever be. A casebook can be reviewed, then, only as something which will be a good or bad teaching device. This leads one to Baker and Cary. Why review it in a publication that is directed not towards teachers but towards practicing lawyers?

One might say in answer to this that no one much reads book reviews (or law reviews for that matter), and hence it does not matter if what is written will be of interest to anyone since it will not be read. Still, there does not seem to be a great deal that is worth saying about the book from the teacher’s point of view (they can all get free copies after all) beyond the fact that Baker and Cary is Dodd and Baker brought up to date with an emphasis on the problems of the close corporation. Most of the material which is now thought to be of little importance such as ultra vires and quasi-corporations is omitted entirely or drastically reduced in bulk. There is, on the other hand, a good deal of new material on such matters as voting trusts and other aspects of corporate control, dividends and accounting, mergers, securities regulation, etc. All-in-all, this is far more than could be possibly covered in any corporations course that I know of (a fact that the authors cheerfully admit). Yet, it is hard to think of a course in the field of corporations that could not be taught from this book. The copious notes that were such a notable feature of the older editions are continued or replaced (as the result of changes in emphasis) by others that seem equally elaborate and useful.

This is the reason the book really might be of interest to practicing lawyers. It contains material—such as, for instance, the material on accounting and dividends—that is markedly superior to anything that is available in the various texts on corporations. A fairly strong case could be made for the purchase by a lawyer of this book as a text.

A text that is a little awkward to use to be sure, but nonetheless a text that can be used, and that is in some areas unique. It is highly unlikely that anyone will do this of course, although a few students may keep their copies for office use after graduation.

This fact—that a casebook may have some usefulness for the general practitioner—has a number of implications. For one thing, it is something that can be said of many casebooks, usually those that are used in second and third year courses. This means inevitably, of course, that these are something different from the “casebooks” that were developed to teach the “case-method.” And so they are. They have cases, but little of the case law development which is typical of a Langdellian book. Further, they have a great deal of text material. Partially, this is because in many areas (many of which used not to be covered in law school), cases are either no longer terribly important, or are very scarce so that one must rely on statutes, administrative regulations, and various sorts of other non-case material. Partially, however, it reflects a dissatisfaction with the case method for many courses. Students are notoriously bored with cases after the first year and many teachers share their feeling. The question arises, what to do if one does not dissect cases, and here there is no satisfactory answer. Lectures would be a possibility, but in theory at least (the practice is not quite so chaste) these are eschewed in American law schools (and that is why American law schools are better than other law schools, etc. etc.). Problems based on the text materials seem to be the modish answer, but the enthusiasm of the drafter of the problems is usually considerably in excess of that of either his students or of others who attempt to use them. One difficulty, of course, is that the case method has enabled law to be taught to large classes without lectures, and as a result, it is one of the cheapest forms of graduate instruction, (in terms of expenditure per student). Radical changes in teaching methods might require a great increase in the staff required on law schools and hence the expenditure per student, and since it seems almost impossible to finance the schools even as they are now constituted, this is something which no one is prepared to face.

One may notice another implication of the book. Few, if any men in the United States were as knowledgeable in the field of corporation law as Professors Dodd and Baker, and Professor Cary is apparently quite ready to join them in eminence. Yet this casebook and some law review articles represent substantially their published work in the field. The same thing is true of a number of others. Professor Roscoe Steffen is one example (agency and negotiable instruments). One may recall that Professor Corbin published his textbook after he was retired. Previously a casebook and some articles constituted Corbin on Contracts. There are many more.

One reason for this surely is that the writing of a textbook is quite as foreign to the work of a law teacher as it is to that of a lawyer. It is never used in class (a very different situation from that in, say, economics). Hence if one is primarily involved in a subject as a teacher of it, one is much more likely to devote one's energies to constructing a casebook which can be so used. The result is that we have myriads of brilliant casebooks and very few treatises of comparable quality. (Of course there are a lot of not very brilliant casebooks too.) This reflects the emphasis on teaching, as opposed to research, that there is in law schools compared to other departments of universities. It means also that one does not get consistently in our legal system (since practitioners have almost totally ceased to do scholarly work) the criticism and synthesis which are the product of efforts to write a systematic treatise—as opposed to the detailed treatment of isolated aspects which is typical of periodical writing—the sort of thing that used to be called “scientific.” This means that professors are much less influential here than would be the case if texts were better and more important than they are, and this may be a bad thing. Or it may not.

At any rate, so long as we are to have casebooks or something that goes by the name, we should be most fortunate if they were all as good as this one.

WILLIAM C. JONES†

PENSION FUNDS AND ECONOMIC POWER. By Paul P. Harbrecht, S.J. New York: The Twentieth Century Fund, 1959. Pp. 328. \$5.00.

The growth of pension funds in recent years has introduced a new force into our capitalistic society, and Father Harbrecht's book is an analysis of their origins, workings and impact. Pension funds represent vast aggregations of wealth, neither public nor private, except in the sense that they are not controlled by the government. They are “owned” by no one in the meaningful sense of the term and, as a result, the author propounds that there arises a need for a rational framework to accommodate the distinction between public and private ownership. Father Harbrecht has been a member of the District of Columbia Bar since 1950 and his main work has been at the Institute of Social Order in St. Louis, the national Jesuit social science center. The book is an expansion of his doctoral thesis at the Columbia University Law School.

The book consists of two main themes: a description of pension funds and an analysis of the changes in the structure of our society as the result of the growth of pension trusts to massive proportions. The

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