

Professor Frankfurter sacrificed both perspective and flavor by limiting his discussions to the opinions of the one man.

Dr. Richardson goes somewhat further than his predecessors in attempting to pigeonhole Justice Holmes' doctrines; this is done without dogmatism; except in the broadest outline, it is done without notable success. Perhaps only their originator is equal to the task. In particular, the suggestion (p. 23) that "Justice Holmes is inclined to find the guarantee of adjective rights to be more rigid than those of substantive rights," may have some point. But as applied to a man who sees rights only as they are effective in the voice and predictable action of an objectively real official, the distinction cannot be pushed too far. The dissents in *Bailey v. Alabama* and the *Abrams Case* are, I believe, to be reconciled, but along no such line as that. Their reconciliation lies rather in that fundamental characteristic of the great judge to which the author does fine justice: tolerance; belief in experiment, even where society's experiment of the moment may seem to him dubious or dangerous or loathsome.

Indeed, one may wonder whether here is not one philosophy of government which Justice Holmes has read into the Constitution, into which, in his view, philosophies of government are never to be read. His vigilance for the rights of individuals has found its limits where they were urged to shackle free experiment of the state; his vigilance for the powers of the state became a vigilance against them, when they threatened to put down that individual experiment in action and opinion without which the cumbrous engine of government must run down.

It is a pleasure to note that Dr. Richardson not only appreciates and stresses this quality in Justice Holmes, but displays much of it himself in dealing not only with those opinions of the Justice with which he disagrees, but with majority opinions which, if he had a wishing-cap, would be dissents.

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Cases on the Law of Public Service, Including the Law Peculiar to Common Carriers and Innkeepers. By Charles K. Burdick. Boston, Little, Brown and Company, 1924. pp. xxii, 738.

Among the reviews, almost uniformly appreciative, of the first edition of this valuable casebook, was one which regretted the departure of the inclusive and scholarly casebook of the Ames type and the substitution of "course" casebooks designed primarily as practical tools for use in a particular course. (29 HARV. L. REV. 891.) It is hardly a complete characterization of this book to consider it as merely a trade tool. Yet it is true that it is designed primarily for teaching purposes and not as a text of the subject. The reviewer regards this as not a defect but an especial merit of the present casebook, which has proven eminently useful in course work. There are probably all sorts of tastes in casebooks but it is thought that the day of the treatise casebook is over. Such a work is not adequate as a treatise and it is not in accord with our thorough-going modern belief in the case system of education. In fact it represented a compromise and a transition from the textbook method of instruction. On this view the notes should be designed, not as complete delineations of topics, but as suggestive only, pointing out opposing views or additional lines of development of the subject. Professor Burdick's notes well fulfill such a purpose and are particularly commendable for their adequate citation of recent law journal material.

The first edition contained no case material, dealing specifically with carriers and innkeepers, their extraordinary liability, and the limitation thereof. Hence, unless a separate course in carriers was contemplated, the work was incomplete. This defect has here been remedied by the inclusion of almost two hundred pages

of such material, making it possible to organize the course on the basis of three hours a week for half a year.

It is refreshing to see a new edition of a casebook where the material previously used is subjected to a thorough-going revision. So often we find a new edition to mean merely the substitution here and there of one short case for another. The subject of rate-making is vastly better treated in this edition than in the former one. As to the matter of withdrawal from the public service, also completely revised, the reviewer is not clear that even as yet an orderly and logical arrangement of the material has been attained. A serious, and it is thought inexcusable, defect in the former edition, the failure to note omissions of portions of the reported cases, has been corrected. About the choice of particular cases there is always opportunity for dispute. Certain omissions, however, seem very strange. Thus from the material on Legislation as a Basis of Public Services duties there is omitted the quite important case of *Wolff Packing Company v. Court of Industrial Relations of Kas.* (1923, 262 U. S. 522, 43 Sup. Ct. 630); while in connection with the Limitations of the Carriers' Common Law Liability, the subject of released rates is treated only in *Kansas City Southern Railway Company v. Carl* (227 U. S. 639, 33 Sup. Ct. 391) decided in 1913, and the recent developments including the Cummins Amendments of 1915 and 1916 and culminating in the case of *American Ry. Express Co. v. Ludenburg* (1923, 250 U. S. 584, 43 Sup. Ct. 206) are not made available in the book.

It may now be said that at last we have adequate material for a comparatively brief course in public service law. With the modern stress on the functional aspect of law, perhaps we may need to reevaluate the subject and to decide if we are giving sufficient time to it, in view of the importance of the functions of public utilities and transportation agencies in modern life. We have to contend with the usual difficulty of the overcrowded curriculum. Furthermore, law students with an adequate preliminary education should be already somewhat familiar with the economic phases of transportation. And while the cases deal with profound questions of social policy, as yet unsolved, the cases on the whole are comparatively easy for the law student to master in their technical legal aspects. The tendency is therefore to compress this work, and in consequence to lessen the emphasis upon its social and economic phases. This is contrary to the modern spirit of legal education and cannot last. Perhaps the temporary and immediate treatment of the problem is a general course in Public Service law as covered by this book, and an advanced course for those specially interested along the line of Professor Frankfurter's *Cases under the Interstate Commerce Act* (recently reviewed in this section, 33 YALE LAW JOURNAL, 112).

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BOOKS RECEIVED

- Cases on Partnership.* By Floyd R. Mechem. Chicago, Callaghan & Company, Fourth edition, 1924. pp. xviii, 1051.
- Law of Libel and Slander.* By Clement Gately. London, Sweet and Maxwell, Ltd., 1924. pp. cxxii, 932.
- Representative Government.* By Henry J. Ford. New York, Henry Holt and Company, 1924. pp. vii, 318.
- The Economics of Taxation.* By Harry Gunnison Brown. New York, Henry Holt and Company, 1924. pp. xxi, 344.
- New York Law of Mechanics' Liens.* By C. Arthur Jensen. New York, Clark Boardman Co., second edition, 1924. pp. lvi, 652.
- Supplement to Carmody's New York Practice.* By Francis X. Carmody. New York, Clark Boardman Co., 1924. pp. 7, 140.