

BOOK REVIEWS

LOCAL GOVERNMENT LAW. TEXT, CASES AND OTHER MATERIALS. By Jefferson B. Fordham. Brooklyn: The Foundation Press, Inc. 1949. Pp. xxx, 1060. \$8.00.

The spectacle of a non-lawyer reviewing a law school casebook for a law journal is unusual but hardly admirable, except in the archaic sense of astounding. For his temerity the reviewer offers no apologies. The editors asked him to do it, and if they print what he has written they will not be the first editors of law reviews to have published some of his scribbles. As a student of local government, both urban and rural, the reviewer has had to find his way through some of the obstacles, mazes, and waste places that surround the subject of the law of local government, and thus has gained a little more than the ordinary layman's grasp of the concepts and terminology of the field.

In this year 1950, despite substantial recent progress in eliminating school districts, there are over 140,000 separate units of local government in the United States. The number of distinctive governing bodies is even larger, because a single large county or city may include a number of fairly autonomous boards, commissions, "authorities" and separate elective officers with statutory powers. These local governments employ over 2,300,000 persons, have about 1,000,000 elective officials, raise and spend over nine billion dollars annually (state aids included) and provide an extensive variety and a great multiplicity of public services. The influence of local government activities upon private rights of all kinds everywhere, and the volume of litigation in which local governments and their officers and regulations are constantly involved, are simply incalculable.

From a constitutional viewpoint all local governments are subordinate to the state. Under constitutional and statutory provisions they exercise many powers of government. They are interdependent and interconnecting to a surprising extent. Considered separately each type reveals certain distinctive characteristics but the common features are more important and more numerous. Moreover, as the functions of local government increase and rural areas take on more urban characteristics, the units of government tend to become more and more alike. There are "counties" whose functions and powers are practically those of cities, while numerous "townships" or towns are just as "municipal" as certain villages and boroughs.

As far as the writer has been able to ascertain, American law schools have not offered as a teaching subject the law of local government as a unified whole. Instead they have confined themselves in this field to "municipal corporations," a subject that appears to have had a checkered and not highly honored career. At least in some institutions it is one of the subjects that is "kicked around" and treated like an unwanted child. This is not to minimize the importance and value of the work in municipal cor-

porations done by such outstanding teachers of the subject as Joseph H. Beale, C. W. Tooke, Murray Seasongood, E. Blythe Stason and a number of other interested and productive specialists, but merely to call attention to a fairly general neglect of the subject. It is not, after all, one of the major divisions of the common law, like property, contracts, and torts. Moreover, it is bedeviled by so many inexplicable diversities among the forty-eight states and by so many decisions that seem to be "political" rather than legal, that the law teacher who wants a reasonable degree of system and consistency in the subjects he teaches can hardly be blamed for eschewing municipal corporations.

A perhaps deeper difficulty with "municipal corporations" as a subject is that no one has ever been able to define it to the satisfaction of anyone else. Statutory uses of the term are particularly confusing and contradictory, but the courts are not much clearer, in spite of their many efforts at definition. In the usual definition, "municipal corporation" includes cities, villages, boroughs and other special incorporations in essentially urban places, but not counties, townships, school districts and certain other units in rural regions. The legislatures may call all these local units "bodies politic and corporate," using the same words as in city charters, but the courts persist in calling many of them "quasi corporations." "Taught law is tough law," and the more poorly it is taught the tougher it seems to be.

At any rate, the attempt to set off "municipal corporations" as a special subject, and to cut it off from the law of local government generally has had seemingly deleterious effects on not only the courses in the field but also on the logical and normal development of the whole body of local government law. The artificiality of the attempt to keep municipal corporations as a separate subject is revealed by the number of instances in casebooks on municipal corporations in which decisions that concern quasi-corporations or even states furnish the best statement of the legal rule on a certain subject and the reason for it.

Every consideration of logic, consistency, adequate coverage, and teaching interest seems to point to the wisdom of a unified treatment of the whole body of law relating to local government. With constitutional law and administrative law covering national and state aspects, and the law of local government covering all the major legal problems of local governments, the public law of the United States would get something like adequate coverage.

Dean Fordham is the first author of a casebook to have cut loose from the limitations of the "municipal corporation" concept and to have selected his materials from the whole broad field of the law relating to local government. Indeed, even the word "corporation" does not appear in his title, a recognition of the fact that there are some local governments that are not strictly corporate. Thus he has shifted the attention away from "municipalness" and "corporateness," both of which are dubious concepts in this field, to the broader scene of local government in general. This new approach is a realistic one, in line with the trends in local government both here and abroad. The English, for example, now codify the

law on the organization of local governments in one comprehensive statute. If the law schools in the United States were to broaden their courses in municipal corporations to courses in the law relating to local government, it would be a step in the general direction taken by recent curriculum revisions, towards more comprehensive and meaningful subjects.

Dean Fordham's work is distinctive in several other respects. About one-third of the entire book consists of material written by him. A brief history of English and American local government is followed by descriptive accounts of the various types of local units. Throughout the book, and placed so as to lead the student logically from one topic to another, are notes on current issues of local government and the legal issues that they raise. There are many references to legal and documentary materials that will be especially valuable to teachers and to those doing research. In connection with the materials on the borrowing power, there is a complete transcript of all the proceedings relating to an actual bond issue.

The book is unusual also in the emphasis it places on relatively new developments in the field, such as the relations between the national and local governments, state administrative supervision, inter-local relations, unionization of local employees, community planning and development, public housing and slum clearance.

Any reader will naturally find points to criticize adversely. The selection of leading decisions is in some cases debatable. Presumably the decisions selected represent a sort of majority view, but it is not everywhere made clear that there are contrary holdings. The background materials on local government are good enough, but they give too little idea of the developments in the case law of the subject and in the adoption of general statutes.

Mechanically and typographically the work seems to be better than average among casebooks, with perhaps fewer typographical errors. The index is adequate, but the cross references in the text are all-too-few.

On the whole this is an original and outstanding work. It sets a new course for students in the field, whether their interest is primarily in law or in local government. The more widely it is used in teaching the sooner will the practitioners in the field develop a modern and comprehensive view of the law of local government.

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COLLECTIVE BARGAINING. By John T. Dunlop. Chicago: Richard D. Irwin, Inc. 1949. Pp. xvi, 433. \$4.00.

COLLECTIVE BARGAINING. By Herman Lazarus and Joseph P. Goldberg. Washington, D. C.: The Public Affairs Institute. 1949. Pp. 72. \$0.50.

Throughout the nation lawyers are concerned about their "public relations." Surveys are conducted in an effort to determine what the people think about lawyers and why. Meetings are held in which lawyers vigorously discuss what they can do to improve their "public relations." That

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