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Book Review. Local Government by Jefferson B. Fordham

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has been unable to kindle much of a responsive glow in the law professors is, not their complacency or their moral irresponsibility,¹⁷ but their sincere doubts as to the fitness of a university law school to conduct the familiarization tours of court houses and the other features of an apprenticeship system contemplated by the judge. No teacher of law will argue against the value or necessity of experience in developing the potentialities of a lawyer. But most law teachers do differ with Judge Frank, I think, and with each other as well, as to the best ways for the law schools to use their opportunities to train their students. And most would, I think, regard as rather cavalier his dismissal of the worth of what is being done in law schools and of internal efforts to improve the training process.¹⁸

This review exhibits to some extent the nature of the irritations which a reading of *Courts on Trial* may provoke among professional readers.¹⁹ They are consistent with his purpose. There are many portions of the book, not herein referred to, which excited my admiration and enthusiastic support. And at his worst, there is always a grain of truth in what he says. The problem of such a reader as I is to rid himself of the minor resentments it excites and not to discount too greatly its extravagances. The book deserves a wide reading, and his suggested recommendations deserve careful consideration—a number of them at least early adoption. The causes for which he argues so vigorously may, however, ultimately be aided more by a less extreme and less implausible statement of the problems of court-house government.

FRANK R. KENNEDY*

LOCAL GOVERNMENT LAW. By Jefferson B. Fordham.† Brooklyn: The Foundation Press, Inc. 1949. Pp. xxx, 1060. \$8.00.

Consciously or unconsciously most law school curricula include courses having three diverse objectives: (1) the "bread and butter" courses; (2) the "skills" courses; and (3) the cultural and jurisprudential courses.

This is obviously an oversimplification, for to a degree every course includes, in part, all of these objectives. Yet it can hardly be denied that the traditional first-year curriculum, the advanced property, and the commercial law courses have been popularly regarded by students and faculty alike as the "bread and butter" of the curriculum. Courses pitched at the appellate level in these areas tend more and more to

¹⁷ See p. 243.

¹⁸ The judge is justifiably impressed by his diagnosis, apparently intuitive, of Dean Langdell as a brilliant neurotic. Pp. 225, 227, and 231; see also *A Plea for Lawyer-Schools*, 56 *YALE L. J.* 1303 (1947). He cannot let the law schools escape too far from the Langdellian mold if he is to exploit his inspired discovery to the utmost.

¹⁹ Some reviewers have been completely taken with the book. See, e.g., Scanlan, 25 *NOTRE DAME LAW.* 396 (1950).

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have little butter and less bread. There is no question that they are justified in supplying the professional culture that every lawyer practicing the common-law system must possess and the skills of analysis to which common-law subjects so uniquely lend themselves.

The glories of appellate practice have certainly been thoroughly propagandized by law school curricula; and, while many confidently assert that legal education should concentrate on the ultimate requirements of the student, his immediate needs and immediate prospects cannot be entirely overlooked. Today, for example, the "bread and butter" is found in ever increasing degree in the areas of taxation and labor law; but unfortunately, these subjects are highly specialized not only in terms of subject matter but also, as far as the young practitioner is concerned, in terms of available clientele. The great majority of graduates from public or private, national or local law schools will engage in *nisi prius* practice, while early contact with the ivory towers of appellate court practice will be reserved for only a small percentage of them.

All of this is by way of saying that Dean Fordham's new book, *Local Government Law*, provides a welcome departure from a classical approach which had reduced enrollments and in many schools driven the subject of Municipal Corporations from the curriculum.¹ Municipal Corporations as it was classically envisioned was a smattering of common-law torts, contracts, and property, a little of public corporations, and some of special remedies and constitutional limitations. These materials bore little if any relationship to the practice of the law before local authorities and in no way informed the student of his responsibility as counsel to local government units. As a specialized duplication of basic courses it offered little; and yet the number of persons who soon after graduation become city attorneys, assistant city attorneys, or attorneys to local subdivisions, or who as clerks in law offices represent clients in local government controversies indicates that a high percentage of graduates have some portion of their early practice directly relating to the field Dean Fordham has chosen for his book.

The success of any casebook until it has withstood the fire of actual use is, I suppose, problematical; yet if there is any new casebook which justifies the seal of approval in advance it must be this one. Its strengths are apparent to anyone who has dealt directly with the operation of local government. These strengths lie in the subordination, if not in the complete rejection, of common-law concepts as a framework for the organization of its material. Instead it accepts that which has always been obvious but has never been emphasized—the exclusively statutory basis of municipal organization and operation.

Any statutory subject poses almost insurmountable problems for

¹ When Municipal Corporations was last taught at Indiana University School of Law in 1934-5, only 8.5% of the second- and third-year students enrolled in the course. With the establishment of Professor Leon Wallace's course in Local Administrative Law (a course similar to Dean Fordham's), the enrollment for the past three years has averaged 20% of the second- and third-year classes.

the editor of a volume intended for general use. It is traditional to accept case materials from all jurisdictions even though the decisions are founded on diverse statutes that make comparison meaningless. Conversely, the use of the specific and particular statutory provisions is shunned. Why a decision of the New York Court of Appeals can be cherished nationally while a statute of the New York legislature is ignored or looked upon with suspicion and doubt is hard to understand, particularly when it is more likely that the statute will be adopted by the legislature of another state than that its court will abandon a rule and accept the New York Court of Appeals decision.

And yet this situation remains, and makes the preparation of a casebook based on statutory materials a worrisome thing. Fordham has faced this difficulty and faced it well, both by the use of comparative statutory material in his scope notes and by the selection of statutory material from a single jurisdiction to develop the problems of particular areas.²

Considering the difficulties involved, perhaps it is not fair to criticize the lack of administrative materials in the volume. It has taken more than half a century to discover that all the law is not in the decisions of the appellate tribunals and perhaps only time will demonstrate that decisions and statutes are not enough.

In the field of local government law this is particularly true. Not only must the formal opinions of state attorney generals be used, but also the formal administrative rules and regulations of state agencies which directly or indirectly circumscribe the operation of local government.³ Likewise, the informal materials must not be overlooked. The "chatty news letters"⁴ written for average non-legally trained personnel, because they reach and are read by local officials, frequently become the law in fact for local government, much more than the attorney general's opinion, the statute, or the court decision, which may be neither seen nor understood. The young lawyer should know that material of this character exists and that it is important. Law schools seldom warn him of its existence. Local government would be a particularly good area in which to emphasize the importance of these materials; but perhaps this can never be accomplished except in casebooks exclusively local in character.⁵

These comments might suggest that the contributions Fordham has made are in the area of structure; but this certainly is not intended.⁶

² See particularly, pp. 768 *et seq.*, 864 *et seq.*

³ *E.g.*, regulations of the Department of Health, Bureau of Weights and Measures, Public Service Commission, State Highway Department, and State Board of Accounts.

⁴ *E.g.*, *THE MONTHLY MAGAZINE* of the League of Iowa Municipalities, and *THE COUNTY AUDITOR'S BULLETIN*, and *THE TOWNSHIP TRUSTEE'S BULLETIN*, published by the Indiana State Board of Accounts.

⁵ *E.g.*, WALLACE, *MATERIALS ON LOCAL ADMINISTRATIVE LAW* (1946).

⁶ The general organization of the volume is as follows:

- C. 1. Type and Objectives of Local Governmental Units.
- C. 2. The Place of Local Government Units in the Governmental Structure
—Intergovernmental Relations.

Effective as is his structural organization, the substantive contributions come in the fields of finance, debt adjustment, and community planning and development, and are the outstanding parts of the volume.

As every city attorney knows, the crucial problem today for cities as well as other governmental units is finance. Finance entails all the problems of revenue, budgeting, borrowing, debt limitations, and expenditure control. Dean Fordham's material on borrowing is unusual and significant. It is built around the complete bond transcript for the issuance of \$300,000 of water and sewer bonds for Landis, North Carolina.⁷ Here the student can visualize all the statutory requirements involved in the issuance of the bonds and the multitude of certificates necessary to prove compliance with each statutory requirement. No text or supreme court opinion can ever substitute for the understanding that can be acquired from the careful study of documents such as this. Materials of this character should tend to eliminate the "loose talk" so frequently engaged in by students, professors, and lawyers not expert in the municipal bond field when the term "municipal bonds" is used to cover anything from general obligation bonds, special improvement bonds, and revenue bonds to anticipation notes. Until student and lawyer are thoroughly familiar with the statutes and the procedure for the issuance of bonds acceptable for sale on the general market, high level policy discussion about debt limits, constitutional interpretation, and municipal fiscal policy will be worse than meaningless. In short, Dean Fordham's bond material is so significant and practical that it is impossible to anticipate the publication of other books in the field without the inclusion of similar material.

Unfortunately Dean Fordham did not employ the "transcript device" in presenting the materials on budgets, funds, and expenditure control. The attorney for a local unit soon learns that the budget is as much his responsibility as it is the unit fiscal officer's; thus it would be most useful to the neophyte to visualize the relationship between the sources of revenue and the areas of expenditure, to understand the mechanics of transfer of funds, and to perceive from these practical materials that law is not all litigation.

The materials on planning and zoning are uniquely good. They rely not alone upon the constitutional cases, which for the most part are of smallest concern to either municipal counsel or his adversary. They include a good collection of statutes and ordinances and give satisfac-

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- C. 3. Legal Aspects of Original Organization and Changes.
 - C. 4. Personnel.
 - C. 5. Law-making by Local Bodies.
 - C. 6. Finances.
 - C. 7. Remedies Against Local Government—Debt Adjustment.
 - C. 8. Community Planning and Development.
 - C. 9. Regulation of Business and Private Conduct.
 - C. 10. Contracts.
 - C. 11. Local Government Responsibility in Tort.

⁷ See p. 481 *et seq.*

tory guidance on the general legal questions involved in the area. If there is any defect in the material, it is in the failure to include enough of the circumstances of controversy, the friction points of expansion in community growth and shift of purpose, that form the basis for the legal issues. Perhaps this is asking for a workbook of far greater compass than is at all practical in a course of local government law. Indeed, with Municipal Corporations customarily offered for only two semester hours, a great deal of selectivity must be exercised to reduce the 1045 pages of text to the confines of the course.

Finally, not by way of criticism but by way of emphasis, the reader must inevitably wonder whether the materials on zoning are appropriate in a course in local government law or might more appropriately be placed in a course in property. Obviously they are appropriate in either, perhaps in both. The substance of human relations does not nicely divide itself for the convenience of a law school curriculum or law professors. There is little doubt today that, for the practicing lawyer, zoning restrictions are a real and vital part of the law of property and conveyancing. So to that extent zoning and planning are property law. But it is equally important for local government purposes, and no one can talk competently of the functions and operations of cities, towns, and counties without considering their independent and frequently conflicting authorities over the planning and development of their communities.

Unique in impact and imaginative in execution, Dean Fordham's casebook is not only an outstanding contribution to the law of local government but also demonstrates the practicability of reorganizing and reorienting materials in a manner which makes legal education as modern as the practice its graduates will enter.

Furthermore, the book presents a point of view too frequently lacking in law school curricula—the view of the lawyer's responsibility to his community. Plenty has been written about the lawyer's participation in "high level policy;" little has been done to encourage and develop the lawyer's capacity to participate in the affairs of his own community. Legal education must be concerned with the "international situation," federal administration, state and federal relations, etc., but it is in the cities and towns of America that the impact of law on efficiency and economy in governmental operation is most needed. Law schools have not assumed the responsibility of leadership in this area. They have neither provided the materials nor the incentive for law graduates to become effective participants in community development. Fordham's book opens this door. Let it be hoped that many will enter the portals.

FRANK E. HORACK, JR.*

CASES ON PARTNERSHIP. 3d ed. By Eugene A. Gilmore.† St. Paul: West Publishing Co. 1949. Pp. xvi, 501. \$6.00.

This is a new edition of a book originally designed to supplement

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