

# Auerbach: The Federal Regulation of Transportation

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## REVIEWS

*The Federal Regulation of Transportation.* By CARL A. AUERBACH<sup>1</sup> and NATHANIEL L. NATHANSON.<sup>2</sup> St. Paul: West Publishing Co., 1953. Pp. lxii, 1223. \$14.00.

At the threshold let it be observed that this compilation of cases, materials, bibliography and comments, fills a gap in the area of public utility law books and fills it admirably. This single volume is a solid and substantial achievement. It combines all the essentials of a source book with that of a well-planned casebook.

The framework of this book is readily and conveniently ascertained by consulting either its Summary of Contents, or its expanded Table of Contents.<sup>3</sup> Entry to this volume is facilitated by this latter outline, containing full citations of cases and extended captions of materials utilized. Here the Table of Contents performs its real purpose. These authors were not satisfied with an emaciated skeleton whose sole resemblance to a table of contents is its caption. The task of indexing demonstrates realistic analysis. Realistic study of administrative functioning, especially at the policy level, is implemented by the collection of Congressional enactments collected in the appendix. Visualization of regions encompassed by certain phases of this work is accomplished by air line route maps reproduced on two-page spreads at the end of this book.

Choosing regulation, at the federal level, as their dominant theme, these authors explore its development and impact on the transportation industries. By way of prefatory remarks, Professors Auerbach and Nathanson itemize their considerations for so channelizing the materials they have assembled. These points, some five in number, which precipitated their selection of that focal point, serve as yardsticks by which to measure the book's general pattern spread through its eighteen chapters.

Concentration on the transportation industries flows from their justifiable position that federal pioneering stimulated abundant case material by which "the interaction between the legislature, the administrative agencies and the courts in the development of regulatory policy"<sup>4</sup> can be ascertained and evaluated. With movement of persons and property as a common denominator of the several transportation industries operating under different statutes, the authors seize upon that condition to present "a comparative analysis of legislative and administrative policies and techniques."<sup>5</sup> They further record, among their points supporting selection and providing direction to their work, that this is a particularly fertile field in which to explore the terrain of subsidies and the shifting grounds between anti-trust "and other regulatory policies of our Government."<sup>6</sup> Since statutory consolidation and codification are profitably examined against the backdrop of these industries, this aspect lent itself as another determinative factor bearing on the author's choice. Their work here

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<sup>3</sup> Pp. xvii to xli.

<sup>5</sup> P. viii.

<sup>4</sup> P. viii.

<sup>6</sup> P. ix.

is a marshalling of representative legal data mirroring economic concepts implicit in the regulatory equation.

A well selected bibliography, of wide range, precedes the text of each chapter. Practitioner and student will find this collection a representative inventory of materials with which to build his intellectual arsenal in this particular field.

Starting from the transportation industries' economic environment, the first chapter moves rapidly and skillfully through an analysis of the sweep of such industries, to the development of pertinent federal legislation. *Munn v. Illinois* provides the springboard for the apparatus of ideas with which to approach the power to regulate and to expand the discussion in order to encompass the scope of federal regulation, administration and enforcement, coupled with particular treatment concerning regulation of supply. Throughout the book, notes written by the authors provide the cohesive substance between reprinted cases and various new topics introduced within a chapter. Thus, the major premise is preserved intact and threads of the minor themes remain coherent during transition from section to section throughout the book.

The Grandfather Clauses are highlighted by devoting all of chapter 3 to the pith of this problem. It must be remembered that these authors have cast their net so that material concerning several different kinds of carriers are presented, when feasible, under each topic or section of their book. Thus, motor, water and air carriers, are the strands of the fabric comprising a part of section 1, chapter 4, pertaining to the "Entry of a New Agency of Transportation-Competition Between Existing and New Transportation Industries." Concomitant problems in the areas of regulation stemming from activities and participation by "Transportation Middlemen" are scrutinized throughout section 4, chapter 4. The shipping acts, and the Civil Aeronautics and Interstate Commerce Act are interposed throughout that particular discussion.

Since the usefulness of a law book depends, among other things, upon the extent to which it illumines legal problems, this volume will more than adequately serve as a training tool. Problems concerning competition are presented strikingly by examining this matter in several different settings. Section 4 of chapter 4 presents competition between common carriers by rail, between common carriers by motor (of passenger and of freight), by water (foreign and domestic) and by air.

By extensive coverage of air carriers, in section 4, the contours and interconnections between regulation and the underlying economic, domestic and foreign policies are readily discernible.

Rate regulation is brought into clear relief in Part III (composed of chapters 12 through 15). If the sole criteria for evaluating this book lay in its treatment of rates, it would measure well above standard. The important facets of the rate making procedure are examined across the field of carriers. It is this sweep which will enable instructors to contrast the several structures of rates and charges, revenues and rate bases.

The path of Part IV, entitled "The Regulation of Carrier," commences with concepts underlying assignability of operating authority and applications therefore, coupled with an evaluation of administrative approval of, or refusal to grant such applications. This avenue of approach proceeds along two routes, e.g., unification of carriers within the same industry and unification of carriers in different industries.

Admirably suited for seminar work, this single volume will stimulate myriad themes for consideration by such groups. As a working tool, it typifies the

blend and breadth of knowledge now required to treat with the transportation industries. It is a guide to the one who seeks to pick his way between naked domination and effective regulation.

MELVIN F. WINGERSKY\*

*Political and Civil Rights in the United States.* By THOMAS I. EMERSON and DAVID HABER. Buffalo: Dennis & Co., Inc., 1952. Pp. xx, 1209. \$7.50.

A most creative epoch in American legal history has been the period since the turn of the century, which witnessed the rise of a vastly significant body of judicial literature in the field of civil rights. All of our law on free speech, for example, has been developed since 1917<sup>1</sup> and is in a present state of unforeseeable development. A casual reader in the field knows that the bulk of the important decisions are relatively recent. This development is a subject of concern to sociologists, psychologists, and economists alike—but it is primarily of interest to lawyers, for it is the courts that either, “stand against any winds that blow as havens of refuge for those who might . . . suffer because they are . . . weak . . . or . . . non-confirming . . .”<sup>2</sup> or fail to do so, to the consternation of the aggrieved.

Law schools, in adding courses on civil rights, have recognized that the lawyer cannot discharge his public duty or be true to his oath to support the Constitution without an adequate grasp of this phase of constitutional interpretation. And, as in the case of every era, a compiler is necessary to preserve the wisdom of creativeness for study and future expansion.

This collection of cases and materials on civil rights very adequately fulfills the purposes of the editors—“to throw light upon those institutions, rules and procedures of our society which keep the system functioning on a democratic level, which permit our people to solve their problems through the exercise of democratic choice, which, in short, form the ground rules for the practice of democracy.” The editors have wisely chosen the case book format to accomplish these goals. The story of the securing of constitutional liberties in the United States is largely the story of the efforts of individuals to restrain governmental impositions of one sort or another, through the medium of the courts acting within our own constitutional framework. A case book alone can serve to portray this story by readily making available to the student or reader the original materials in the field. Yet, a case book is not enough, since some critical approach to the cases is required for purposes of evaluation. Such a critical approach must be grounded, not only in logic or broad political philosophy, but in experience as well. This book can only be praised for the comprehensive selection of materials included in the textual sections. Law review articles, statistics, and quotations from such important works in the field as, *The Report of the President’s Committee on Civil Rights and Free Speech in the United States*, by Professor Chafee, make for interesting reading as well as critical commentary. Each section contains summaries of cases which could not have been treated in full form because of the inherent limitations of book making. But to the mind of this reviewer at least, the most outstanding feature of the book is the series of bibliographies in each chapter. Here is the springboard for important research in both the legal and “non-legal” facets of civil rights.

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<sup>1</sup> Chafee, *Thirty-Five Years with Freedom of Speech*, I (1952).

<sup>2</sup> *Chambers v. Florida*, 309 U.S. 227, 241 (1940).