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Press, 1952

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# BOOK REVIEWS

AMERICAN PIPE LINES. By Dr. George S. Wolbert. Norman, Okla. University of Oklahoma Press, 1952. Pp. xi, 179. \$3.50.

American Pipe Lines by Dr. Wolbert is a trenchant analysis of an important transportation facility which has played a major part in the development of our economy during the last half century. In a detailed and well planned study the author presents the industrial structure, economic status and legal implications of a specialized form of transportation associated with the oil industry which virtually has remained unexplored. The author frankly admits he is not offering any panacea to a controversial problem which has been raging during the past two decades. The approach is one of framing the issues as he puts it: "stripped of spurious contentions" so that a satisfactory solution to the pipeline problem may be had.

Transportation from an economic point of view performs the function of place utility. Our vast and intricate network of transportation, which is superior to any other and is the envy of the world, has been a key factor in the development of our economy. The drama of "Black Gold" and its influence on all phases of life throughout the world is recognized clearly. However, this would not have been possible without the accompanying development of an adequate transportation agency, namely pipe lines, which made accessible to the refiners the requisite volume of raw materials necessary for conversion into gasoline and kindred products to meet the ever increasing demands of our industrial mechanized society.

It is evident that pipe lines are an extremely specialized form of transportation. They suffered the traditional fate of all other forms of transportation and soon came under the control and aegis of the Interstate Commerce Commission, the grandparent of administrative agencies. It was claimed that this industry was one vested with the public interest and therefore subject to the usual regulatory controls of governmental dictates because of its so-called monopolistic or semi-monopolistic nature. The oil industry has been under severe attack during the past years from many quarters with increasing demands for vertical disintegration of the industry. However, Dr. Wolbert points out that common experience "tells us that the world is not all black and white, nor can an industry be placed either in a category of competition or of monopoly."

Having this in mind the author proceeds to examine in a dispassionate, analytical and incisive manner the development of pipe lines "against the backdrop of the present anatomy, behavior and performance of the oil industry in order to understand the peculiarities of their structure and intelligently evaluate their social performance." This scholarly monograph is the work

of an expert not only in the field of law who understands the ramifications of trade regulation in the relation of government to industry but also one who perceives with keen insight the peculiar technological problems involved in petroleum engineering and economics. The presentation of the problem in a somewhat legalistic pattern is simply divided into two main sections: "Facets of the Controversy" and "Remedial Devices." In the former, a historical development of pipe lines dating from the latter part of the 19th century presents the evolutionary development, the accomplishment and concentration and integration which resulted. This is followed by the complaints which have been lodged against the oil industry which the author enumerates and classifies under three general heads:

1. Alleged denial of independent company access to pipe lines.
2. Inequalities of competition engendered by major company pipe line ownership.
3. Alleged creation of monopoly in the oil industry through the instrumentality of pipe line control.

Under one in an orderly fashion are examined the rates, service requirements, rateable taking and shipper's use of pipe line facilities. The section regarding "Service Requirements" reveals a penetrating insight into the technical and economic problems of the industry which are complex and baffling to the ordinary layman. The development of any regulatory or control scheme would be worthless and well nigh impossible and impractical without an understanding and comprehension of these day to day operating problems in the transportation of oil and careful consideration of them. Parts Two and Three receive the traditional orthodox treatment of this type of analysis which had its inception and probably reached its apex in the extensive investigations held by the Temporary National Economic Committee Hearings (1939-1941).

Particularly forceful is Wolbert's analysis of the fundamentals and basic differences in the economics of pipe line transportation and railroad transportation. The outstanding characteristic is that pipe lines were built to service only one industry, whereas railroads were built to serve all for a transportation profit. Pipe lines carry only petroleum products in one direction while railroads haul diverse commodities in as many directions as their lines run. Clear recognition is made by the author of the importance of economic terms and theory in our anti-trust laws, which economic doctrines are becoming more and more assimilated by court decisions and administrative action. These concepts are of course requisite and have become necessary tools of legal analysis and they are presented in a concise, clear and intelligent manner covering in addition the mores, economic theory and the law of monopoly.

Section two of *American Pipe Lines* is titled "Remedial Devices" and is devoted to, among other things, the regulation of pipe lines under the Interstate Commerce Act and an analysis of the Elkins Act Consent Decree.

The section concludes with Dr. Wolbert's summary with respect to the pipe line transportation wherein he points out that the:

1. Industrial pattern developed was conducive to the maintenance of free competition.
2. Regulatory authority of the Interstate Commerce Commission is sufficient to curb abuse on the part of pipe line companies.
3. Divorcement of pipe lines *per se* would not contribute to a program designed to prevent abusive restraint of trade and undue use of leverage made possible by large aggregations of power and on the contrary it would render a disservice to many of the independent operators presently engaged in the industry.

Inconsistencies of Antitrust Law enforcement are decried and cogently discussed by Dr. Wolbert with particular reference to the divergent attitudes and philosophies of "soft Competition" and "hard Competition." It is pointed out that any program of industrial regulation should be consistent and in accord with the actualities of industrial operations and should be characterized by a pragmatic approach rather than an esoteric one.

Needless to say, this judicious analysis will be of keen interest to the oil and transportation industry. However, it seems to this reviewer that this case study of an industry serves another purpose as it is an excellent example of the painstaking process requiring expert knowledge not only in law, but in many other fields which must be followed in order to satisfactorily solve the complex problems of our day. There is an increasing recognition of the fact that the lawyer today, and more so in the future, will be required to have an adequate basic perception and understanding of all economic, social and technical factors if he is to guide his client in a suitable manner and in the additional task of helping to formulate legislation which will not ruin our economy. The study is well documented and the extensive footnotes contain a wealth of valuable information regarding the technical aspects of the industry.

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HANDBOOK OF THE LAW OF EVIDENCE. By John Evarts Tracy. New York: Prentice-Hall, Inc., 1952. Pp. 382. \$5.35.

Unlike many books published today, this one is aptly described by its title. As Mr. Tracy writes in his introduction, the book makes no pretense of being an exhaustive treatise on the law of evidence. Quite to the contrary, its function is twofold; first, to provide a young lawyer, who can not afford and indeed has no real need for Dean Wigmore's great treatise, with some work on evidence for his personal library; second, to provide the attorney just before or during the course of a trial a quick answer to his evidence