UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 20 | Number 4 Article 6

6-1-1942

Book Reviews

North Carolina Law Review

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Principles of Public Utility Regulation. By Abraham C. Webber. Washington, D. C.: Public Utilities Reports, Inc. 1941. Pp. xvi, 831.

The umpire in any contest, whether it be a game of ball or a verbal conflict arising from the clash of opposing interests, is in the number one position for complete and impartial understanding of that contest. Mr. Abraham C. Webber was chairman of the Department of Public Utilities in the State of Massachusetts from 1932 to 1939, and consequently arbiter for seven years in the struggle between the people and the utilities companies.

The purpose of his book, "Principles of Public Utility Regulations," as stated in the *Foreword,* is to preserve Massachusetts public utility decisions and to furnish "a medium of contact" between Massachusetts and other states in the exchange of views upon matters which are more or less common to all. It is not intended to cover all of the questions that might arise in various sections of the country; nor are we to assume with regard to those questions which are discussed that there is nothing further to be said concerning them. In fact, the physical differences between the various sections of the United States, as well as the social, economic, and political differences, would render the successful accomplishment of such a task next to impossible.

Mr. Webber's book was designed primarily to put into the hands of the members of the Massachusetts legislature, public officials, lawyers, students and public commissions of other states a convenient working tool. To this end the text has been annotated and furnished with a topical index. Its value is further enhanced by the frequent use of definitions and liberal citations of various authorities.

The two parts into which the volume is divided are: Part I, Discussion of Principles With Special Reference to Massachusetts Practice, the subject of this review; and Part II, Massachusetts Department Decisions, containing sixty opinions, commented upon and annotated, which enriches its value for reference, especially for utilities commissioners and lawyers.

In Part I, Discussion of Principles (in twenty-eight chapters), he takes up the general principles and the problems which have been foremost to him in his work and gives his own views regarding them. The first chapter of Part I deals with the regulatory process. He brings out the fact that the sole duty of commissions is to enforce the law. While they should not attempt to usurp the functions of legislatures or courts, it is their duty to report the necessity for changes in the laws

and to assist in securing impartial justice for companies, corporations and individuals.

He, in the succeeding chapters, ably makes his reader note: the need for sufficient appropriation so that the commission may adequately carry forth its work, the need of clearly defined powers for administrative bodies, a demarcation line between *inter* and *intra* state commerce, the necessity of a system of appeal to the court, but one that does not destroy the usefulness of the body itself, the value of uniform accounting with the fallacy of any single set formula for valuation, a flexible system of procedure so that true justice may be obtained, and the need of blue sky laws.

These things he discusses very well, but we have to always keep in mind that it is the umpire who is talking and he is speaking of his own ball game. Many of the things which are law in Massachusetts are not so here, and many of his problems are minor in North Carolina and our major problems are minor to him. He barely mentions the burning question of the South, discriminatory freight rates; yet natural gas legislation is of prime significance to him. Further, many of his discussions are greatly colored by the Massachusetts view upon the subject, but his book does not purport to be a textbook, nor a book for beginners, nor a completely comprehensive treatise upon utility law. He has succeeded in setting forth the viewpoints and problems of his state and many should read it so that the nation can profit by the exchange of views and betterment of utility regulation technique. The lawyer also will find strong arguments with authorities for his cases and a world of ideas.

STANLEY WINBORNE.*
VAUGHAN SHARPE WINBORNE.**

Amending the Federal Constitution. By Lester B. Orfield. Chicago: Callaghan and Company. 1942. Pp. xxvii, 242.

This interesting and suggestive volume appears in the series of Michigan Legal Studies. The author has been engaged in research on the amending provision of the Constitution since 1928. The chapters in the present book originally appeared as articles in various law reviews. These have been revised and brought up to date in the light of *Coleman v. Miller,* the most recent Supreme Court decision dealing with the proposed Child Labor Amendment. One new chapter has been added, Chapter V, Sovereignty and the Federal Amending Clause.

In the Foreword, Dean Henry M. Bates emphasizes the timely character of a comprehensive study of the amending process, and the

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author in his Preface states that no monograph has previously appeared on Article Five. Without doubt the amending clause has been the neglected provision of the Constitution by both scholar and commentator, and merits the exhaustive examination of research study. Professor Orfield contributes toward this end by bringing together in a single book a number of studies of particular aspects and phases of the Amending process.

The general arrangement of the book is quite satisfactory. Chapter I, The Genesis of Article Five, is a concise and adequate analysis of the formulating elements that appear from a study of the records of the Convention to have gone into the making of the amending provision. Chapter II, Judicial Review of Validity of Amendments, is a technical treatment of a subject the nature of which is legal and must be dealt with in terms of the lawyer and the judge. This chapter is especially valuable from the standpoint of research in that it is supported by an examination into all the decisions and other source material relevant to the subject.

Chapter III, The Procedure for Amending the Federal Constitution, is a step by step survey of the proposal and ratification stages of the amending process and a discussion of the principal questions that have arisen as to proper procedure. This Chapter is subject to criticism on the ground that it does not thoroughly explore the many ramifications of amending procedure. For example, the several attempts to set the process into operation by application from State legislatures is dealt with entirely inadequately. A search through the records of State legislatures as they considered application for a national convention in the 1790's, 1830's and 1860's would throw considerable light on the alternative method of proposal. The same is true in regard to the informal attempts at proposal in the practice that developed prior to the decade of 1840 when the legislatures were the principal forum for discussing the necessity of amendment. Again many precedents of value will be found by a search through the records of legislative sessions during the period of pendency of amendments for ratification. Such a search will show that as many as five states rather than two ratified the Corwin Amendment, and that the amendment was not affirmatively rejected by a single State. Precedent for the rescinder will also be found prior to the Fourteenth Amendment, that is the case of Ohio and the Corwin Amendment. New Jersey's action on the Thirteenth Amendment was not a reversal from rejection to ratification as the original resolution which failed to pass was in the form of ratification and not a rejection act. It would seem that the rescinder by Iowa in 1925 of three applications for a convention by analogy bears upon the question of the State's right or disability to reverse its action

on ratification. Again the veto by the Governor of Florida of an application resolution in 1903 and the veto of the Governor of New Jersey of the rescinder of the Fourteenth Amendment bear directly on the State executives participation in the amending process. Conclusions as to the desuetude of amendment should not be drawn without an examination of the records of the State Department. The fate of the Title of Nobility Amendment proposed in 1810 could not be definitely announced in 1861 by Secretary of State Seward in answer to an urgent inquiry by the Governor of Massachusetts.

Chapter IV, The Scope of the Federal Amending Power, contains an excellent analysis of the whole problem of limitations on the amending power, both expressed and implied. Chapter V, Sovereignty and the Federal Amending Clause, in the opinion of the reviewer, is the distinct contribution made by Professor Orfield, to the interpretation of the amending process. Nowhere else have I found what Professor Burgess brilliantly called the constitution of sovereignty treated with such keen critical analysis. Chapter VI. The Reform of the Amending Clause, is also well done.

Professor Orfield should be complimented for his comprehensive use of the secondary material relating to the subject. In addition he has made an exhaustive study of the court decisions. This material has been thoroughly digested and his exposition is admirable. The principal criticism that I would offer is that the study is too narrowly legalistic and too strictly limited to the lawyer's point of view. After all the amending process more than any other part of the constitution is based on political practice—it is a part of our extra-constitutional government. If I interpret *Coleman v. Miller* correctly this is the conclusion that the Supreme Court has arrived at. In order, therefore, to attain the goal mentioned in the Foreword and the Preface, in order to produce a really definitive work on the amending process, a great deal of additional spade work is essential. Much research in the records of the political institutions participating in the various stages of the amending process is necessary. Especially is this true of the journals of State legislatures. The reviewer disagrees with Dean Bates in the Foreword that the author has made an exhaustive study of the materials available. Ames pointed out in his great work on proposed amendments in 1892 the desirability of searching through this material. Since then complete collections of the printed journals have been assembled, and there is in progress a project to microfilm those in manuscript. The Solicitor General recognized the value of this source material in preparing the government's brief in the *Coleman* case.

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