

Milk Distribution as a Public Utility. By W. P. Mortenson. Chicago: University of Chicago Press, 1940. Pp. xviii, 221. \$2.50.

Dr. Mortenson's contention in this book is that a unified system of milk distribution, under conditions existing in the Middle West, could greatly reduce the costs of handling fluid milk which are present under prevailing monopolistic-competition patterns. His cost calculations (based largely on an unpublished thesis written under Dr. Mortenson's supervision by Mr. Gale Johnson) indicate the possibility of cutting distribution costs by twenty-five to thirty-eight per cent. These estimated economies are chiefly in delivery labor (where less men could do the work if one agency delivered all milk) and in salaries. No wage-rate reductions are implied; and except for depriving the consumer of his choice of milkmen and limiting him to two or three grades of milk and two of cream, no significant curtailment of service. The need to lay off men and reduce the amount of plant and equipment—particularly the latter—make it plain that the economies could not be realized in full at once, but would take place gradually over a period of years.

The two forms of unification which Dr. Mortenson contemplates are (1) controlled private monopoly, treated as a "public utility," and (2) public ownership and operation of all distribution facilities. His optimism about possibilities under the first plan makes no allowance for the difficulties of choosing the one of the existing companies which is to survive and insuring its ability to buy in the other companies at a reasonable price; and it is noticeable that the book's imposing array of not excessively relevant legal case material offers no clues as to whether the power of eminent domain could be used in behalf of a private company in buying out other companies, or as to the treatment of purchased properties in determining valuations for rate-basing purposes. (On the latter point it is plain that much could be learned from electric utility and railway cases.) In the reviewer's judgment, the only way to arrive at private, regulated monopoly without inviting inflation of acquisition cost would be first to establish public ownership and then sell out to a private company. Failure to consider these transitional difficulties is a major blemish upon the book.

Viewed as propaganda addressed to the public and to the legal profession, the book does an important dis-service by further confusing the issue of competition versus monopoly. Although the bibliography lists half a dozen general discussions of monopoly and monopolistic competition, the text is altogether innocent of modern doctrine, and the evils of semi-monopolistic conditions are regularly described as evils of competition.¹ On the policy side, moreover, possibilities of enforcing competition are too lightly dismissed. There is a reasonably competent discussion of the reasons why imperfect competition does not lead to unification;² and it is also indicated³ why imperfect competition is unfavorable to maintenance of *private agreements* against unduly frequent deliveries, excessive variety of grades, and permitting some customers to evade full payment for milk used and bottles destroyed. But if, as Dr. Mortenson concedes, the enforcement of such rules could secure at least "some of these economies of service mentioned above," why could they not be enforced by *public authority*?

¹ The usual anti-competitive catchwords of "chaotic conditions" and "disrupted markets" appear on p. 9; on p. 7, Dr. Mortenson goes so far as to say (without a scrap of supporting evidence) that "public welfare, health, and safety were being jeopardized" in 1932 due to price-cutting factors labelled as "unfair and destructive trade practices."

² Pp. 16-18.

³ P. 89.

If it were really desired to cut distribution costs, it might be quite feasible to canalize competition on a price basis, by setting *maximum* as well as minimum ratings for grades, limiting the number of grades, and in general standardizing the non-price factors into which competition among small numbers of dealers tends to run off. If forced to compete solely on a price basis, dealers would have to look closely into opportunities to reduce both costs and prices by deliveries in greater quantity but at longer intervals. Dr. Mortenson's anti-competitive bias shows up, incidentally, in the complete lack of discussion of the reduced rates for gallon purchases which are now becoming common and the extent to which they may correct the alleged "competitive abuses."

Since the book, by its Wisconsin origin and its copious legal citations, is labeled as institutionalistic, the reader should be warned that all the material dealing with public attitudes toward milk distribution is strictly *a priori*.⁴ A factual inquiry on public attitudes in the Middle West would be a useful supplement to the cost study here presented.

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Cases and Materials on the Law of Future Interests. By W. Barton Leach. 2d ed. Chicago: The Foundation Press, Inc., 1940. Pp. xxvii, 1042. \$6.50.

This second edition of Professor Leach's cases and materials on Future Interests follows the first edition exactly as to order.¹ The changes in material are fairly numerous and are suggestive and helpful.

Several decisions that appeared since the first edition have been inserted among the main cases. Such are *In re Montgomery's Estate*² on the vesting of class gifts and the interesting *McKallip's Estate*³ on powers.

There are, also, additions in the shape of notes discussing problems of both theoretical and utilitarian value. One of the best examples of these is the fine three-page note beginning on page 238 on the Use and Abuse of Testamentary Trusts. Throughout the work one feels the definite purpose of making the volume realistic and at definite grips with both the theory and the practice of creating future interests.

The illustrative footnotes are also considerably increased, largely by the addition of recent decisions. How far this can be wisely done has always seemed to the reviewer something of a problem. Any case book is necessarily a reflection of the attitude of the author toward the subject matter. It is his judgment as to what points should be emphasized in treatment; as to what is the best order to develop the material; as to what are the most significant and valuable cases or other material. All this is inevitable, and within large limits most teachers would agree as to what the salient points are in the particular field, and if they do not like the order in which the material is presented, they can ordinarily change it without too much difficulty. It is also true that a certain amount of fringe material in the shape of footnote cases or

⁴ Thus (p. 152): "Managers . . . *can be expected*" to oppose change.

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¹ See Bigelow, Review of Leach, Cases and Materials on the Law of Future Interests, 49 Harv. L. Rev. 1018 (1936).

² P. 420; 166 Misc. 347, 2 N.Y.S. (2d) 406 (Surr. Ct. 1938).

³ P. 580; 324 Pa. 438, 188 Atl. 343 (1936).