BOOK REVIEWS


Professor Sears has been faced with two problems which seem to harass editors of casebooks on Administrative Law. The first problem is the inadequacy of size, for no publisher, apparently, can afford to give editors as much space as they need for a complete casebook on this subject. The second problem is what approach should be selected. Should it be procedural, purely realistic, or as a branch of Constitutional law. Three casebooks in the field might be said to represent each of these types. Professor Sears' book has apparently attempted to combine all three in one volume and, as the volume is a small one, the result falls short of being a complete survey of Administrative Law. The administrative tribunal material, however, is more complete than in the other books in the field and to that extent is a unique contribution.

This collection was originally intended as a basis for a third edition of Freund's Cases on Administrative Law. The editor finally concluded that, although he owed much to Professor Freund, the material he wished to present was sufficiently different in arrangement and approach that an entirely new collection was the most desirable method of presentation. As an introduction to the subject he has retained the treatment adopted by Professor Freund, and has used a series of cases dealing with the remedies available to litigants wishing to test administrative action.

Many law schools feel that courses on procedure are more suitable for dealing with cases on these standard remedies and Professor Sears has arranged his material so that the chapter on remedies could readily be omitted. It is Chapter 1 and deals with habeas corpus, prohibition, quo warranto, certiorari, mandamus, mandatory injunction, preventive injunction, and declaratory judgments. The cases are mostly quite recent ones, and the appropriateness of the grouping is clear except as to declaratory judgments. A study of declaratory judgments in the abstract before the student has approached the nature of administrative tribunals and their general purpose seems likely to result in an arid as well as confusing discussion of the function of declaratory judgments.

The cases on habeas corpus, mandamus, mandatory injunction, preventive injunction, and declaratory judgments are mostly recent cases. Those on prohibition, quo warranto, and certiorari are mostly of the 19th century. The most interesting cases are those dealing with injunctions, and they bring up questions of administrative policy which, it would seem, could more profitably be studied in the later chapters. Also, a relatively larger share of Chapter 1 is given to injunctions than to the other writs and processes. Declaratory judgments have only eleven pages, and no Declaratory Judgment Act is set out. Adopting the editor's suggestion of beginning with Chapter 2 it is difficult to see how these remedies can be related to the other topics in the book. Of course many of these same processes come up incidentally in later cases where adequate study is usually afforded if the opinion is reported as a complete whole. A lot of the material on procedure could, perhaps, be placed in a general course on Constitutional Law under a heading dealing with political questions. Two hundred and five
pages are devoted to these remedies, leaving 595 for the general substantive materials on Administrative Law.

Chapter 2 which deals with the general nature of administrative tribunals has the currently fashionable opening material and makes possible the use of this casebook by schools using the non-procedural approach; 106 pages are devoted to this topic. The Congressional Record provides the opening statement as to the existence of 142 bureaus and agencies in addition to the ten executive departments of the government headed each by cabinet members. The 142 bureaus and agencies are listed in this excerpt. Quotations from English writers and the classics are introduced in the opinion of a well-known Wisconsin case. An address by the President of the American Bar Association and quotation of statistics from a law review article follow.

A series of cases is used to show the nature of administrative tribunals, and they deal with the following topics: The Packers and Stockyards Act, The New York Board of Fire Commissioners, Massachusetts Fish and Game Commissioners, The United States Board of Tax Appeals, The State Highway Commissioner of Virginia, and four opinions on the famous case of Morgan v. United States. As the topical arrangement of material in the third chapter includes agriculture, that would seem a better place for cases on agriculture.

Continuing the survey, the cases deal with the Postmaster-General, the Indiana Board of Tax Commissioners, The New York Blue Sky Law, The Illinois and Interstate Commerce Commissions, the Federal Trade Commission, The Securities and Exchange Commission, The Court of Claims, The Immigration Act of 1919, all as an introduction to Ohio Valley Water Company v. Ben Avon Borough. The chapter concludes with a New York case on Workmen's Compensation Law and gives to Crowell v. Benson only a short note reference. The unorganized “covering” of all these different agencies has never seemed to this reviewer a proper method by which to introduce the uninitiated student to the uncharted seas of Administrative Law. In this respect Professor Sears follows Professor Stason in the presentation of vast detail. However, in the succeeding chapters of the casebook Professor Sears adopts a topical arrangement in presenting the different types of agencies “in operation.”

Chapter 3 opens with a section on Taxation which, while one of the oldest forms of administrative activity, does not bring out so clearly the current problems of social and economic policy. Perhaps the student will have gained an insight into these problems by the study of Chapter 2. Section 2 deals with Immigration cases and very briefly covers the material by excerpts from an article and from the Congressional Record. Deportation cases are taken up before exclusion cases, a reversal of the historical development, and only a few are given of each. These are from the lower federal courts, and the Supreme Court cases are presented second-hand in the opening excerpt and in a one page quotation from Dean Van Vleck's Administrative Control of Aliens. Sections 3 and 4 of the chapter deal with Health and Morals and Workmen's Compensation re-
spectively. The material is brief and again the better known cases are given only passing reference. Section 5 deals with Business and has elaborate subsections which are mostly bibliographies and citations of cases which are rarely printed in more than the title. Section 6 deals with the Interstate Commerce Commission although headed Utilities and has a few references to state commissions. The Ben Avon case and the St. Joseph Stock Yards case are nowhere referred to. A special section, Number 7, is assigned to The Perishable Agriculture Commodities Act, and the decisions referred to as PACA decisions presumably by the Department of Agriculture. This is in addition to the earlier Section 3 on Agriculture. Section 8 on Civil Service closes the chapter.

Chapter 3, probably the most important chapter in the book, gives the impression of introducing the student to materials at second or even third hand and brings up a fundamental problem of modern education as to how far principles can be understood and validly used by persons having only a second or third hand acquaintance with them. The presence of abstracts of administrative decisions does not compensate to any degree for the absence of first-hand material to be found in important judicial opinions or in statutes. An appendix at the end contains rules and regulations under the PACA referred to above.

The rest of the casebook consists of two chapters and appendices. Chapter 4 deals with officers, their selection, removal, and responsibility. It occupies ninety pages. Chapter 5 deals with governments’ responsibility, local governments, state governments, and the government of the United States. The chapter occupies seventy-five pages. The Appendix contains the introduction and Tables of Classification from “Working Papers on Administrative Adjudication” by Dr. Blachly of the Brookings Institution. This material was originally prepared for the use of the committee on the Judiciary of the Senate of the United States.

This casebook contains more purely administrative material than do the others available. Yet it does not present a realistic cross-section of administrative activity because of the lack of adequate space. This reviewer feels that a volume of about 3500 pages would be necessary to achieve such a realistic presentation. The editor’s comprehensive learning, and his knowledge of the most recent material, give the collection a fresh touch, which is most stimulating to all teachers and students of Administrative Law.

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This is a collection of twenty-seven papers read at the meeting of the American Historical Association at Philadelphia in December, 1937, on the occasion of the sesquicentennial anniversary of the United States Constitution. The papers are grouped into three parts: (1) The background of political, economic, and social ideas behind the Constitution; (2) The Constitution and its influence upon American thought; and (3) Repercussions of the Constitution outside of the United States.

* See note 3 supra.
