

Government Corporations and Federal Funds. By John McDiarmid. Chicago: University of Chicago Press, 1938. Pp. xx, 244. \$2.50.

At a time when the perennial problem of reorganizing federal governmental agencies is again in the headlines, Professor McDiarmid's survey of federal government corporations is most timely. He has focused attention, however, almost exclusively upon the capital-raising and expenditure-control problems of these corporations. He has not appraised the financial and operating results or the administrative efficiency of such agencies. Consequently, his study is more descriptive than analytical.

In an introductory chapter framing the scope of his survey, Professor McDiarmid pictures government corporations as devices to secure financial freedom and flexibility for administrators, with the implied aim of greater administrative efficiency. Basically, the problem, as he sees it, is to harmonize accountability in spending public funds with the reduction to a minimum of red tape and interference with administrative flexibility.

Following this introduction, the author describes the growth of government corporations. As is well known, the greatest use of the corporate device in government has occurred in response to the twin emergencies of war and acute economic depression, when quick action was most important. In a separate chapter, he describes the various methods adopted in raising or allocating capital to these corporations. Government corporations generally have sought independence from annual appropriations by Congress. Based on pleas of the need for continuous financial planning, most corporations have secured their initial capital by investment of public funds in capital stock. Many of these corporations have been granted supplemental borrowing powers, either with or without government guaranties of principal or interest. Some are assured continuing working capital or capital for expansion by the privilege of retaining surplus earnings.

The balance of the book is primarily a description of the experiences of the corporations in securing freedom from accountability to the Comptroller General's office. Separate chapters deal with early government corporations, especially the Panama Railroad Company and the Inland Waterways Corporation; the corporate agencies supervised by the Farm Credit Administration; the Tennessee Valley Authority; the Reconstruction Finance Corporation and its satellites; and a miscellaneous group ranging from Federal Prison Industries, Inc., to the Home Owners' Loan Corporation and the Federal Deposit Insurance Corporation.

The success of these agencies in achieving immunity from the Comptroller General's supervision varies. At one extreme of nearly complete independence are such agencies as the Panama Railroad and Inland Waterways Corporation, with the farm credit agencies not far behind. At the other extreme is the Federal Prison Industries, Inc., which, although it has financial independence so far as capital is concerned, conforms to the Comptroller General's accounting and auditing rules. In between are the majority of these corporations which have had periodic or continuing disputes over the degree of accountability to the Comptroller General. One conclusion that may be drawn from these experiences is that the severity of the struggle concerning accountability is directly proportional to the economic and political strength of the private interests affected either adversely or beneficially.

In a concluding chapter Professor McDiarmid passes over very briefly the suitability of the corporate device in government administration. He seems to assume that

the task of reforming regular governmental departments to make them efficient tools for commercial or quasi-commercial enterprises is hopeless and that therefore the corporate device is justifiable to secure speedy and flexible action. With respect to supplying capital, he favors the stock subscription method with the limitation that congressional approval must be had for capital outlays in new though related fields, and a grant of supplemental borrowing power without government guaranty except in activities primarily emergency or relief in character. Except in liquidation, he seems to favor permitting government corporations to retain surplus earnings for re-investment rather than paying earnings into the treasury. In these views he seems to be opposed to the current sentiment for curtailing the powers of the so-called independent agencies.

With respect to accounting and auditing control of expenditures, the author is less definite. He accepts as indisputable the fact that government corporations "must be held adequately responsible for their stewardship of public funds."¹ On the other hand, "the subjection of all government corporations to the 'auditing' control of the General Accounting Office as that agency is now constituted would be a serious mistake."² The solution lies in between complete autonomy and strict, legalistic accountability. In the author's opinion the comptrolling function—passing upon the legal authority for expenditures—"should be exercised within the corporations themselves."³ The auditing function should be in the nature of a post-audit, should be a "service or efficiency audit" in addition to a "financial or fidelity audit," and should be performed by an independent agency empowered "thoroughly to investigate operations and to make recommendations to Congress as to efficiency as well as honesty in administration."⁴ Apparently he favors a combination of the kind of supervision exercised by the Farm Credit Administration and the auditing activities recommended by the President's Committee on Administrative Management.

In the reviewer's opinion this book is a convenient summary description of government corporations in their capital-raising and spending aspects, and a suggestive prelude to further exploration in the field. It must be remembered that the author approaches the subject from the standpoint of public administration, rather than from the point of view of the economist or lawyer. Further studies are needed before the proper place and functions of government corporations can be judged adequately. The financial and operating results of these corporations and their internal organization and management need constant examination and review. Likewise it would be helpful to have a comparative study of similar functions by government corporations, regular government departments, and private agencies, as, for example, a comparison of the Reclamation Bureau, War Department, T.V.A., and private utilities, in the construction and operation of dams. With respect to accountability for expenditures, there is room for experiment. The major recommendations of the President's committee for reorganizing the auditing department deserve a trial to see if they will cure some of the unhappy disputes of the past.

The reviewer has some misgivings with respect to Professor McDiarmid's recommendation that the legal validity of expenditures be left wholly to the corporations concerned, especially when accompanied by the degree of financial independence which he believes desirable. While there is good ground for condemning the existing procedure for detailed, legalistic pre-audits of expenditures, should we go to the other

¹ P. 214.

² P. 222.

³ P. 223.

⁴ P. 226.

extreme? Modern statutes are drafted in such general terms and lawyers are so ingenious in statutory interpretations that a stronger curb than the mere self-restraint of a general counsel seems desirable. This phase of the problem deserves greater attention from lawyers.

There should be complete agreement, however, with the author's final conclusion that the ultimate safeguard against administrative abuses is the selection of competent and public-spirited administrative personnel. Despite contrary legal or political theories, we live today under a government of men, more than under the rule of law.

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The Law of Treaties, British Practice and Opinion. By Arnold Duncan McNair. New York: Columbia University Press, 1938. Pp. xxix, 578. \$7.50.

This important volume presents to the student hitherto unavailable materials from the British Foreign Office, principally the opinion of the law officers of the Crown on the subject of treaties.

Students of international law have to an increasing extent realized that the advance of international law, both as a body of doctrine and as an influence on world affairs, depends upon ready access to the sources. It is easy for both the layman and the lawyer to assume that international law does not exist unless confronted by the mass of practical references to it by foreign offices, courts, and other official agencies of all governments. The reticence of foreign offices, as well as the linguistic variety and scattered official publication of relevant material, renders the task of assembling the sources on a given controversy, principle or topic more difficult for the international lawyer than for the national lawyer. John Bassett Moore's well known digests of international arbitration and international law were culled largely from United States Department of State archives and made use of the earlier digest by Francis Wharton. These volumes were pioneering ventures, the value of which was immediately recognized by the profession. Two volumes have appeared from a somewhat similar compilation of British Foreign Office materials by Professor H. A. Smith of the University of London. Collections of adjudicated cases bearing upon international law have become common since James Brown Scott's publication in 1904. The collections by Pitt Cobbett, Bentwich, Stowell, Evans, Hudson, Fenwick, Dickinson, Briggs and others are designed primarily for classroom use, but, since the World War, more exhaustive publication of such materials has been undertaken, particularly in the *Annual Digest of International Law Cases* edited by McNair and Lauterpacht in England, and the *Fontes Juris Gentium*, which includes diplomatic as well as judicial materials, edited by Victor Bruns in Germany. National governments have greatly increased their publication of materials bearing upon international law since the World War, the League of Nations and the Permanent Court of International Justice publish an extensive body of materials, and such private institutions as the Carnegie Endowment for International Peace have contributed, not only to the publication of collections of official materials, but also to the republication of the classical treatises on international law.

The dynamic character of the modern world, however, has turned the attention of international jurists to treaties and legislation, even more than to custom, precedent,

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