

have a schedule of industrial requirements for the armed forces, but they must make reasonable estimates of the effects of the defense program on civilian economy. They must guess as to income, the need for expansion of production, and the institution of priorities and rationing. Statistics can be obtained which will materially aid in answering these questions far better than they were answered during the last war. Through charts and discussion the author shows what can be done. Wayne C. Grover, in his article, "The Control of Industrial Mobilization," lays particular emphasis upon government contracting and subcontracting, and discusses at some length competitive bidding versus negotiated contracts. Another article in this part of the book, "National Defense and Local Government," by Lawrence L. Barber, is a study of the Quincy, Massachusetts area which contains large defense plants. The author discusses the effect of the increase in population on the municipal problems of this area, such as fire-protection, education, and the tax rate. The last article, by Alvin H. Hansen, is entitled, "Changes in Economic Structure Arising out of the War and Their Implications for Public Policy." He points out that important changes in the world economic order grew out of the last war, that economic policy following the war failed to take cognizance of these changes, and that after this war there is reason to believe that we are less likely to make this same mistake. One of the chief reasons for this is that after the last war the overwhelming consensus of opinion favored a policy of returning as rapidly as possible to the *status quo ante*, whereas now everywhere public opinion and public leadership recognize not only that the world has profoundly changed but also that it is changing at a rapid rate. There is a growing recognition and an increasing readiness to accept the implications of this. He discusses anti-depression policy, public policy in international economic relations, and other related topics.

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The Judicial Function in Federal Administrative Agencies. By Joseph P. Chamberlain,† Noel T. Dowling,‡ and Paul R. Hays.§ New York: The Commonwealth Fund, 1942. Pp. xii, 258. \$3.00.

This general survey of the quasi-judicial functions of twelve leading federal administrative agencies is, as the authors state, not "a law book in the sense of an analysis of court cases and other legal materials." It is a broad exposition, however, of the policy-making powers of those agencies, of the sanctions employed in enforcing their orders, and of the relation between them and the courts. The authors state that the Report of the Attorney General's Committee on Administrative Procedure with its accompanying monographs "made it unnecessary to include here a large amount of the detail in respect to the procedures of the agencies, which was collected and used as a basis for this study." A resulting lack of specificity and concreteness causes this work to suffer in comparison with that Report. There is, moreover, an apparent tendency throughout most of the work to be content with mere description and exposition and to refrain from evaluation, criticism, and concrete suggestions. This deprives the study of

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much of the vigor and incisiveness it might otherwise possess. For example, while there is considerable discussion in the chapter on "Methods" of the role played by the trial examiner in administrative proceedings, there is no reference to the important function exercised in many agencies by the anonymous members of the "opinion sections" who first analyze for the agency the case developed at the hearing and put in written form the decisions determined by the agency heads. Messrs. Chamberlain et al. do suggest that the hearing examiner should be a relatively independent "well trained and competent person who knows the practice of his agency," and, having real authority in conducting the hearing, should prepare written findings of fact and conclusions of law. Yet, there is not here the forthright criticism of the system that one finds on pages 45 and 46 of the Attorney General's Committee Report, and there is an inexplicable failure to refer to the Committee's recommendation that the trial examiner himself should make the authoritative determination of the agency, which would stand as the final order of the agency unless appealed to its legally appointed heads. Again, though there is in the chapter on judicial review a short and competent analysis of the majority and dissenting opinions in *Crowell v. Benson*,¹ (evaluation is lacking except for the statement that "judicial development up to this day suggests that due process of law and separation of powers must be reckoned as important factors in the federal administrative problem"). As a consequence, the chapters of the book relating to administrative procedure, policy making, and judicial review, while presenting an adequate bird's-eye view of the general field, add but little to the already existing literature.

What has just been said has no reference, however, to the chapter on sanctions, which comprises over a third of the work, and to which the authors have evidently given their chief attention. Here a real and significant contribution is made. To "sanctions," that is, the various devices by which government is enabled to enforce compliance with its officially declared will, the practicing lawyer is apt to pay but little attention. In this chapter the authors explore the subject both in theory and in practical application to concrete situations. Their concern is not primarily with such legally provided sanctions as the civil penalty suit for violation of orders of the Federal Trade Commission or the action by the National Labor Relations Board in the circuit court of appeals to enforce compliance with its cease and desist orders. The authors, rather, direct their attention to the unofficial but extremely practical methods by which many agencies are able, without resort to formal procedure, to enforce compliance with their desires. For example, "publicity has become one of the most effective administrative sanctions. The press release of the Federal Alcohol Administration Act 'has virtually added to the statute another enforcement sanction.' " So also the possession of supervisory and investigatory powers, exercisable at the discretion of the agency with lenience or with strictness, in themselves are powerful means of securing obedience to administrative directions. Throughout their discussion the authors brush away legal technicalities and come to grips with the realities of the situation. They are also concerned, more than are many commentators on administrative law, with the protection that should be afforded the private interests that come in contact with administrative power. In many agencies, as the Attorney General's Committee Report points out, most conflicts between the administrative agency and the private individual are settled informally without the procedural safeguards which the formal hearing affords the private person. Legally speaking, there is no necessity that the private party thus sub-

¹ 285 U.S. 22 (1932).

mit his controversy to informal settlement. He may demand the protection of the formal hearing. In practice, however, this option may not be open to him. "In the negotiations leading to settlement a government agency has many advantages. A private party will not want to be in the bad graces of the agency which administers a law affecting his business. There will be a tendency on his part to come to an agreement with the agency rather than to carry the matter into a formal hearing." This is particularly true where the time element is important or where the private party has a business reputation to protect which might be ruined by even the institution of formal proceedings. This is the type of consideration that causes issuers of securities to come to informal agreements with the Securities and Exchange Commission instead of carrying their claims into the stage of adjudication by formal, public hearing. It is in the case of these informal sanctions that Professors Chamberlain, Dowling, and Hays believe greater concern with the protection of private interests should be displayed. "The problem of administrative sanctions is not primarily that of their efficacy. Because efficiency in regulation cannot be the only purpose of government, the effectiveness of a sanction in shaping conduct toward the end conceived by administration . . . is not the sole test of the desirability of the sanctions. Those elements of fair play and individual justice which are called liberty are equally a purpose of government whatever may be their effect on regulatory efficiency. Achieving a balance of interest in the administrative agencies requires a re-examination of procedure in terms of sanctions and in terms of the ends other than the mere dispatch of business which procedure is designed to serve." With the present knowledge he possesses of administrative practice, the reviewer is by no means convinced that it is practical by statute or administrative rule to regulate in detail the employment of informal sanctions by administrative agencies. For the present, at least, he is inclined to believe that the chief protection to the individual must be in the good sense, integrity, and fair-mindedness of the agency personnel. Nevertheless, he welcomes the present study as throwing a shaft of light into what is still a rather dim corridor of the administrative edifice.

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Traffic Courts. By George Warren. † Boston: Little, Brown & Co., 1942. Pp. xxvii, 280. \$4.00.

Few will gainsay the heedless losses and the untold human misery and suffering wrought by traffic accidents. As George Warren has pointed out in his timely and informative study of America's traffic court system: "Fundamentally, the stake is nothing more than our public welfare."¹ The truth of the assertion is evidenced by cold hard facts: the annual toll is nearly 40,000 persons killed, 1,250,000 maimed, crippled or otherwise injured, and a direct economic loss of more than \$1,500,000,000. Any study which proposes a means of attacking the traffic accident problem is therefore more than welcome. And George Warren's systematic and comprehensive evaluation of the many weaknesses in the judicial administration of traffic violations supplements penetrating analysis with ameliorating suggestions. The author displays a series of

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¹ George Warren, *Traffic Courts* p. 3 (1943).