BOOK REVIEWS


It has become trite to remark that Administrative Law is the region of most rapid growth in our modern jurisprudence. The triteness of the remark, however, affords little help to the practitioner who is seeking to find his way through the densely tangled wilderness of legislative acts creating administrative agencies, of administrative regulations seeking to implement these acts, of administrative decisions and orders adjudicating controversies under such acts and regulations, of administrative reports explaining agency policies and of judicial decisions reviewing administrative action.

There is no digest of all of this mass of material and there is, of course, no key number system. One must tread his way as best he can through the enabling legislation in the substantial tomes of the United States Code; through the sixteen massive volumes of the Code of Federal Regulations, not counting the supplements thereto, as brought up to date by the Federal Register, which appears several times a week; through the orders and decisions of each administrative agency appearing in scattered reports; through annual reports and sometimes press releases appearing at irregular intervals; and, finally, through judicial decisions which, by and large, have been digested and indexed under specific topics without the slightest regard to administrative law as a system.

Aside from the pioneer works of Goodnow, Freund, Frankfurter and Dickinson, the Harvard Studies in Administrative Law, the publications of the Brookings Institution, and miscellaneous law review articles and notes, the only guides for many years have been occasional books on particular agencies. The monographs and reports of the Attorney General's Committee on Administrative Procedure and its Final Report and the hearings of the subcommittee of the Senate Judiciary Committee thereon constitute the first attempt to present an objective survey and a critique of federal administrative practice. The Attorney General's Committee, however, dealt primarily with administrative action within the federal agencies. It made no attempt either to exhaust or to systematize the case law of judicial review of administrative action.

That is the primary purpose of vom Baur's Federal Administrative Law and it thus constitutes an invaluable complement to the work of the Attorney General's Committee. The author has not treated his subject vertically, agency by agency, but horizontally by topics. He has thus sought to present principles of general application rather than rules in watertight compartments pertinent only to specific agencies. Just as an earlier generation of learned text writers took the decisions in various actions *ex delicto* and evolved the law of torts, so the author has sought to evolve from a host of more or less isolated decisions principles of judicial review of administrative action. Only prolonged and intensive use of the work will reveal its soundness of detail, and this the reviewer has had as yet no opportunity to do. Meantime, one may express a sense of obligation, first, for the skill displayed in gathering together in one work material heretofore widely scattered in the reports, and secondly, for the keen analysis of a highly complicated subject matter, which has the effect of placing the basic problems in this field in proper perspective, even though this sense of obligation may be tempered by a doubt as to the extent to which the rules in one branch of administrative law may be carried over into other branches.

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Unlike some contemporary advocates of administrative procedure, the author does not regard it as an amorphous process subtly avoiding wherever possible the principles of our accepted constitutional law. On the contrary, he finds (pp. 8-9) in the supremacy of law and separation of powers the backbone of administrative law:

“In preserving the legislative sphere under the doctrine of separation of powers, a definitive body of law has arisen governing the extent to which powers of legislative character may be delegated to an administrative agent. The exercise of delegated legislative power to complete the legislative process may not be interfered with by the executive. . . . And where legislative powers have been lawfully delegated, their exercise by an agent may not be interfered with by the courts except where a situation appropriate for the constitutional exercise of the judicial power is presented. . . .

“Conversely, the legislative branch may not encroach upon the judicial sphere. Under the principles of constitutional law permitting the delegation of certain legislative powers, administrative agencies undertake to apply a legislative policy or standard to particular facts. This has given rise to a practical situation, of profound importance respecting the development of administrative law, in which agencies venture a decision upon a question of law in order to dispose of a particular case. But a decision by an agency on a question of law is never binding per se, and such questions are always open for independent judicial decision in an appropriate case.

“When the judicial power has been exhausted remand to the agency is the appropriate method for return of the cause to the legislative sphere for determination of any remaining administrative questions.”

The work is noteworthy, too, for its sound analysis of the fact-finding function:

“Both in cases arising between the government and those subject to it, and in cases of private right, determinations of fact must be made which, from their nature, do not require judicial determination and yet are susceptible of it. The mode of determination being within its control Congress may reserve to itself the power to determine, or may delegate that power to legislative or executive officers or other administrative agencies, to legislative courts, or to judicial tribunals. And even where it is essential to maintain strictly the distinction between the judicial and other branches of the government, it must still be recognized that the ascertaining of facts, or the reaching of conclusions upon evidence taken in the course of a hearing of parties interested, may be entirely proper in the exercise of executive or legislative, as distinguished from judicial, powers. The legislature itself, or its delegates, may use methods like those of judicial tribunals in the endeavor to elicit the facts preliminary to a legislative act. In such an inquiry, for the purpose of determining a rule for the future, there is no invasion of the province of the judicial department.” (pp. 12-13)

The work has two appendices, one detailing statutory provisions as to judicial review, the other giving selected forms. In addition to numerous tables of authorities, there is an ample index. The work is an indispensable tool for the busy practitioner in this growing sphere of professional activity.

Arthur T. Vanderbilt,†

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This important book—like Gaul—is divided into three parts containing a total of twenty chapters; it has an appendix in six parts, a complete table of cases, and a well-made index. To law teachers, lawyers and corporation executives this text brings a wealth of well organized and timely information.

The author analyzes and discusses the contract of employment of corporation executives, with emphasis on the various types of compensation thereunder, such as cash, stock bonus in various forms, security options, profit-sharing, pensions, and provisions calculated to offset inflation and reduction through taxation. He sets forth illustrative provisions from the contracts of company executives, using for this purpose many well known and large corporations. To the lawyer or other person who wishes to formulate a plan of compensation, the material in this section of the book would be of the greatest value.

The legal aspects of certain points in these employment contracts are, in the main, fully covered. Such legal problems are discussed as reimbursement of executives on account of inflation or income taxation, action directing payment to officers in general, sundry pension schemes and annuity agreements, rewards for services already rendered, the proper method of computation under profit-sharing clauses, stock bonus plans, and controls judicially and governmentally imposed, especially with reference to the amount of compensation. The author presents an instructive list of cases where the reasonableness of the compensation either was put in issue or was made the subject of obiter dicta.

Beginning with the sixteenth chapter, Mr. Washington discusses the questions which grow out of the burdens and risks that inhere in the positions of corporation executives, and the possibility of shifting the incidence thereof from the officers—guilty or innocent—to the corporation itself. In addition to quotations from numerous by-laws proposed to shareholders in recent years—almost like an avalanche since New York Dock Co. v. McCollom—and calculated to set up an equitable yardstick of liability to bear or share the expense of shareholders' suits against officers, he cites and quotes from numerous court decisions on the subject. The four final chapters are devoted to this problem and, to the lawyer, at any rate, they are probably the most useful and interesting in the volume. Professor Washington brings together cases—sometimes from the same jurisdiction—often conflicting or difficult to reconcile, but always of real help to the student, or the lawyer who may be called on to counsel corporation officers in this complex field.

The appendix contains samples of such documents as indemnity agreements (recent amendments to by-laws), profit-sharing clauses and plans, the management trust, and stock option contracts.

The discussion of the problem arising out of the Securities and Exchange Act, the Public Utility Holding Company Act, and the Investment Company Act is reasonably adequate, with references to judicial decisions, opinions of general counsel, articles in periodicals, regulations, reports and other pertinent sources. The effect of violations of federal acts on the validity of compensation plans, the disclosure of such plans under the acts and the proxy rules, and whether stock plans are security sales within the act, are probably as fully considered as the newness of the problems permits.

This is a timely book, on the whole well done, and of real practical value to lawyers, law students, law teachers, and business executives.

_Sveinbjorn Johnson._


We have to be grateful to the Carnegie Endowment for the publication of this book just in time to give part of the legal information necessary for the forthcoming military occupation of enemy territory. The Army and the Navy are now training their officers at the University of Virginia and at Columbia University in the law of military government. Even this reviewer has changed his seminar at the Law School of the University of Pennsylvania from orthodox Comparative Conflict of Laws into one on Post-War Problems of Conflict of Laws, and discusses with his students, on the strength of his own experience in and after World War I, the problems of conflicting jurisdictions, interests, etc., during a military occupation and after its termination. Dr. Feilchenfeld’s book is also contributing to the war effort as will be shown here.

The author should not have been worried that it were not “possible to achieve peacetime academic standards in a new research.” This book is as good as it can be in view of the actual turbulent circumstances in which we are living. True, as Dr. Feilchenfeld remarks, the subject of military occupation has been neglected, though not ignored, for many years. The reason is obvious. We were too close to our personal experience in the first World War, and are once again in the same kind of struggle. As I wrote in 1930 in the preface to my book on the strike of the Belgian judiciary (in which I discussed the jurisdictional, legislative and other general problems of such occupation), it requires distance, in time and in mind, to pass upon events which go beyond human measure.

The book gives more than the title promises although it does not exhaust the subject. The author does not restrict his research and the results drawn therefrom to the mere economic law of the occupation. However, this does form the largest part of the book. He treats Property (public and private—and how the occupant draws advantage from them for his purposes), Public Finance (public debts, money and currency, revenue and expenditures), and Regulation and Organization (legislative power, railways, central banks, etc.). In addition, he includes shorter, yet by no means less important, chapters on relations between conflicting jurisdictions (of the occupying and of the occupied State) and on occupation during an Armistice.

Right now, discussion on these latter and other more general problems of belligerent occupation is very timely as in this World War Germany, as the so far chief occupant, overthrows the limits set up by the 1907 Hague Rules on Landwarfare in effacing the clear and iron line between occupation and annexation.

The author quotes on page 144, par. 485, note 2 the decision of the German Reichsgericht (Supreme Court) of November 17, 1924, in which this court—for the first World War—in deciding a marriage case, treats...
the occupied part of Russia as still Russian and as not affected as regards
the sovereign rights of the Russian state or the law in force therein.
However, it should be mentioned that the same Court overruled its own
opinion for the present World War. The impression that the older deci-
sion, which alone is quoted, still reflects the prevailing German doctrine
would be erroneous.

On September 17, 1941, another marriage case came to the bar of
that Supreme Court. The National-Socialist regime had been in power
almost nine years and the bench of the Court had changed in the interim.
The Court denied that the State of Poland still existed and treated the
husband (a Polish citizen, resident in Germany, but of non-German blood)
as a stateless person. It was merely admitted that the Polish inhabitants
of the German Government General (covering only that part of Poland
which is not outright annexed) are subjected to Polish courts which have
to apply Polish law.

This must be added to give an accurate picture of the present attitude
of the German Supreme Court.

Following the termination of any occupation there will be a dispute
about which jurisdiction should prevail. In such cases, the sufferers are
mostly the citizens of the returning sovereign, and a clear picture of this
regrettable situation is given by the author.

Quoting of merely secondary sources is a dangerous practice and leads
eventually to mistakes. This is shown by the author who quotes decisions
digested in the Annual Digest of Public International Law Cases, only
citing that abridged report without going back to the source. On page
137, Dr. Feilchenfeld quotes a judgment of January 31, 1919, of the Belgian
Conseil de Guerre (Court Martial) of Brabant in the Matter v. G. van
Dieven (Annual Digest, 1919-1922, Case No. 310) and refers to a Procla-
mation of the German Governor General in Belgium, dated January 4,
1915, mentioned therein. Neither Dr. Feilchenfeld, nor the Annual Digest,
quotes or uses the original source of that Proclamation and thus, under-
stands that Proclamation as saying that “the Orders issued from this day
—issuing of the Proclamation—onwards by the King of the Belgians and
the Belgian Ministers have not the force of law within the domain of the
German Government of Belgium.” The conclusion, which is wrong, there-
fore, is that the exclusion of the binding force of the legislation by the
absent sovereign has effect only for the future. In fact, the Proclamation
says something entirely different. It once more (erneut) draws attention
to the fact (or rather, rule of international law) that onwards from the
date of establishment of the German occupation administration (“von dem
Zeitpunkte der Einsetzung dieser Verwaltung ab”) only the orders of the
German Governor General have legal force; decrees of the Belgian King
and his Ministers issued “seit diesem Zeitpunkte” (since that date, i. e., of
the establishment of the German administration, and not the date of the
Proclamation) have no legal validity within the occupied territory. Dr.

2. “Deutsches Recht”, Vol. 12 (1942) p. 6, No. 9. The decision is ordered to be
published in the official reports.
3. § 4 of the Erlass (Decree) of the Führer of October 12, 1939, on the Admin-
istration of the Occupied Polish Territory, Reichsgesetzblatt, I, p. 2077; § 4 of the
Verordnung (Ordinance) of the Governor General of February 19, 1940, on the
Polish Jurisdiction in the Government General, Verordnungsblatt des General-Gouver-
neurs für die besetzten polnischen Gebiete, I, n. 64.
4. The original report is in the Pasicrisie belge, 1919, III, pp. 1 ff., from which the
Annual Digest translates wrongly.
5. Gesetz- und Verordnungsblatt für die okkupierten Gebiete Belgiens, No. 28,
January 7, 1915, p. 96.
Adolf Merkl, whom the author quotes in his bibliography had read the Proclamation itself and interpreted it correctly.

In paragraphs 322 and following the author discusses the respect which the occupant owes to the allegiance of the inhabitants to their legitimate sovereign. A particular class are the officials of the occupied country. I have dealt with their problems in my book on the strike of the Belgian judiciary and in an article on the conception of the Belgian (and German) authorities on the duties of the officials of an occupied territory.

Altogether, Dr. Feilchenfeld’s book is timely reading and is published in the right moment for the many who are concerned with its topics.

Dr. George H. Wunderlich.


The double sponsorship enabled the author to make a two years’ study of traffic courts from the point of view both of a lawyer familiar with the resources of a well-equipped law library, and of a field investigator who has visited more than two score cities from Augusta (state not named) to San Francisco. Coverage of additional cities was secured through supplemental questionnaires sent to judges, police departments and justices of the peace.

The author’s recommendations, some 57 in number, are clearly stated at the very beginning of the volume, perhaps following the precedent of ninety-five theses once nailed upon a door at Wittenberg. These recommendations, we are informed, have been duly approved by various groups including the House of Delegates, the Junior Bar Conference and the Sections on Criminal Law and of Judicial Administration, of the American Bar Association.

Many of the recommendations will challenge no dissent. The first reads: “Traffic laws with inherent defects should be revised and those which are unenforceable or unnecessary should be repealed.” Similarly all students of this subject may well concur in the Fortieth suggestion: “The primary aim of the traffic court should be to impress defendants with the need for traffic law observance rather than to penalize.”

The volume covers the subject adequately and should prove invaluable to those concerned with problems of procedure and methods of handling the wilful or excusable disregard of traffic laws and regulations.

The author presents his material on a factual basis, discussing separately such topics as traffic court administration, traffic court personnel, the “fix”, records, and “a proposed traffic court system”. A set of suggested forms appears in an appendix.

Those who have sponsored this record of the first systematic study of its kind in this country have assumed that the general reader is familiar with certain measures known as the Uniform Vehicle Code and the Model Traffic Ordinances, which it is stated (on page 18) were developed by the National Conference on Street and Highway Safety. These measures are

7. See note 1 supra.
8. WUNDERLICH, JURISTISCHE WOCHENSCHRIFT (1923) 145. See, furthermore, LANGER, DER JUSTIZSTREIK IN OBERSchLESSEN WÄHREN DER BESETZUNGSZEIT IM JAHRRE 1920 (1934).
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broadly approved in Recommendation Number Two. Unfortunately the present reviewer has not been able to locate the Model Ordinances, for they are not summarized in this volume nor do they appear in the current volumes of the Uniform Laws Annotated drafted by the Commissioners on Uniform State Laws. In volume ii of the Uniform Laws Annotated is printed the text of the Uniform Act Regulating Traffic on Highways which formerly was known as the Uniform Motor Vehicle Act, and, under that title, was approved by the Commissioners in 1926 and revised in 1930.

Another recommendation relates to that modern institution popularly referred to as a "cafeteria court". The views of the author are expressed in crisp words, "The basis for all violations bureaus should be a signed plea of guilty and waiver of trial." "The violations bureau must be founded on the theory that those appearing have violated a law and its procedure must be designed to impress the offender. Any other practice may well create a disrespect not only for the agency but for the traffic enforcement generally." (Pages xxi and 59.)

Apparently all those who cross the bridge of sighs leading to the portals of the bureau for handling the less hazardous infractions of the rules of the road in instances in which no injury has occurred to life, limb or property, must use the password "mea culpa". Not even a plea of "nolle contendere" would be considered.

Let us turn back the pages of American history some two centuries or thereabouts and examine the first good road map of Philadelphia and vicinity, published by Lewis Evans in 1749. The marginal notations, in balanced language, explain that in Penn's Province "the roads are very well accommodated and settled to the mountains. . . . It is a country of liberty and good laws where justice is administered without rigor or partiality."

For two centuries the courts and lawyers have sought to give vitality to the truths embodied in the last sentence. The purpose of the volume on traffic courts could be expressed in similar language: "A study of courts and procedure whereby traffic laws in America, may, to an increasing degree, be administered with justice and without rigor or partiality."

Edward Weeks many years ago recounted in the Atlantic Monthly (October 1927, page 445), under a title, "A Criminal in Every Family", his personal experiences following an occasion when he passed another automobile while driving around a curve at a point which was not sufficiently hazardous to lead the highway authorities to erect a cautionary sign. Mr. Weeks, among others, was observed and summoned to court, and directed to pay a fine of twenty-five dollars plus costs.

His comments do not lose their force after fifteen years: "For pure extortion the Court scene was a page from Dickens. . . . But seriously, motor traps and perfunctory charges, whether for this or a more honest purpose, only serve to increase the natural antagonism between drivers and the police."

Mr. Warren's volume on Traffic Courts may be considered a factual study which may hasten the day when, for such episodes as that which befell Mr. Weeks, justice will be administered in traffic courts (or in a bureau for handling petty infractions of traffic regulations) without rigor or partiality, reserving the gloved might of the law for the enemies of society, and for those who hit and run, or who mix gasoline and cocktails or who in fact have injured the person or property of others.

Albert Smith Faught.†

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