

BOOK REVIEWS

CASES ON ADMINISTRATIVE LAW. By Felix Frankfurter and James F. Davison. Chicago: Commerce Clearing House. 1931. pp. viii, 1147.

In the field of law there is an art of advocacy and an art of teaching, an art of draftsmanship and an art of the judicial process. There is also an art of research. To be a great teacher of law is to be a very great artist, for not only must such a teacher possess the qualities of imagination, industry, inspiration, intelligence, intellectual integrity, and tolerance, but he must also have a flair for the dramatic and colorful. To do research work of a high order, the teacher must have not only an infinite capacity for details, and genuine organizing ability, but also a mind totally impersonal as to the results to be obtained and entirely free from antipathies, prejudices, preconceived ideas, or predilections. This is indeed an essential element to research,—the open, the inquiring mind.

The compiler of a casebook of the first rank should excel in both the art of teaching and research. Such a combination is rarely found in one man and when such a person publishes a casebook, much is expected of it. Professor Frankfurter's years of teaching of Administrative Law in the Harvard Law School have brought him enduring fame as a teacher. His original and exhaustive contributions to the literature of public law have fully demonstrated his abilities in the field of research.

As a man writes, provided he writes sincerely, so is he. Professor Frankfurter's interests are truly global. He takes us up on a high mountain and there reveals unto us all the glories of the far-flung world of administrative law. The United States, Canada, England, Ireland, Australia, New Zealand and South Africa are seen in the vast, the illimitable expanse that lies before us. Out of a total of 1147 pages, containing approximately 168 cases and miscellaneous material from *THE TIMES*, etc., there are twenty-eight cases from the British Empire, with other English material, totalling roughly, 220 pages, or almost one-fifth of the book.

If Professor Frankfurter had any unfriendly critics they would exclaim: "An Anglophile, a lover of perfidious Albion." The editors, however, in their preface, attempt to justify this unusually high percentage of English material by pointing out that the problems of the British Commonwealth of Nations and the United States are similar in the development of a system of Administrative Law, and by referring to the advantages to be derived from a comparative study of these different systems of public law. They might have also drawn upon the analogous period in our own legal history when the American states were developing their systems of the common law and English precedents were most extensively and critically studied and examined.

In contrast to the relatively large amount of English material is the paucity of material from the American state courts, only nineteen of their decisions being printed,—seven from New York, four from Massachusetts, two each from Ohio, Pennsylvania and Wisconsin, one each from Maryland and Florida. The query arises: have states of the juristic standing of Illinois, California and New Jersey, for example, nothing to contribute to the subject

of Administrative Law? Of the remaining case material, ten decisions are from the inferior federal courts and the balance, constituting the bulk of the book, are from the Supreme Court of the United States. One wonders whether this selection best preserves that fine balance between state and central governmental spheres that is so desirable in our federal system.

Professor Frankfurter is both practical and modern. Eighty-three, or almost one-half, of his cases have been decided since the Armistice. Nineteen of them were decided in 1929, 1930, 1931. His subject is a new and rapidly growing one; sudden shifts and faults are likely to occur at any moment; obviously it is necessary and desirable that recent material be used.

The cases are well and closely edited. In the domain of public law, where important opinions are usually of considerable length, this in itself is no small achievement. The average length of the cases is about six and one-half pages. Perhaps *People v. Tremaine*,¹ and *J. W. Hampton & Company v. United States*,² could have been pared down more closely; perhaps a little more might have been printed of *Myers v. United States*,³ and *Wayman v. Southard*.⁴

Professor Frankfurter is thought of as a "liberal" in public affairs, whatever that may mean. He is usually identified with the Holmes-Brandeis school of thought on constitutional problems. But it is undoubtedly merely a coincidence that the book contains seventeen opinions, dissenting or majority, by Brandeis, sixteen by Holmes, nine by Taft, nine by Harlan, five by Stone, four each by Taney, Field, Sutherland, Van Devanter and Waite, three each by Cardozo, White, McReynolds and McKenna. Length and date of service play a part in this system of judicial rating, but the book shows that Mr. Justice Brandeis has been an outstanding figure in the development of Administrative Law,—his contributions are preeminent.

Today, old idols are being smashed, the temples are being cleaned. It is fitting, therefore, that the dissenting opinions of today, which may be law tomorrow, should be included in a casebook on public law. Thirty dissents are printed, totalling approximately 104 pages,—or slightly under ten per cent.

The editors' minds are richly stored with the facts of history. They give us, therefore, many cases with vivid, colorful, tense, dramatic backgrounds; the Swartwout scandal crops out in the cases on pages 56, 150, 859; the black pages of Daugherty's regime as Attorney-General are reflected on page 72; the Jay Cooke failure has its tragic consequences brought to light on page 63, etc., etc.

Some members of the New Jersey Bar may regret that *Ex parte Hague*⁵ is not referred to in the book as a footnote to *Kilbourn v. Thompson*,⁶ or *McGrain v. Daugherty*.⁷ But this, after all, is a matter of individual taste. *The People v. Barnett*⁸ might appear in a second edition.

¹ P. 92.

² P. 480.

³ P. 114.

⁴ P. 364.

⁵ 103 N.J.Eq. 505; 104 N.J.Eq. 31, 369; 105 N.J.Eq. 134; 9 N.J. Misc. 89.

⁶ P. 63.

⁷ P. 72.

⁸ 344 Ill. 62, 176 N.E. 108; 26 LLL. L. REV. 582; 17 IOWA L. REV. 239; 80 U. OF PA. L. REV. 129.

Students appear to think that an undue amount of space is devoted to the vague, inchoate, illusory, intangible doctrine of "Separation of Powers." Student opinion, though not to be lightly disregarded, is often lacking in perspective and seasoned maturity of judgment. A small amount of this space might well have been devoted to the problems of the modern metropolitan areas, which are breaking down old state and county divisional lines and have given rise to Metropolitan Planning, Transit, Water and Sewerage Commissions, Port Authorities, Interstate Tunnel Boards, etc. The problem of exclusion, however, is as delicate and acute a one as the problem of selection, and the material included in the book is of great aid in the solution of the problems not directly presented.

The contributions of Professor Davison to the book are doubtless as important as those of Professor Frankfurter. There is, of course, no way of appraising their work separately, and the reviewer has taken the liberty of merging their identities under the title of Frankfurter, the senior editor.

Book reviews are probably written too soon after publication. It might be better to wait five years and see how the book has lasted. But, alas, too often all we would have to write then would be an epitaph. A few books are destined for immortality, according to Horace, and therein they also make the writer immortal. Circumstances prevent casebooks on law from being within this group, but the prediction is made with some confidence, that here is a book that will "stand up" for a long time to come.

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CONVICING THE INNOCENT: ERRORS OF CRIMINAL JUSTICE. By Edwin M. Borchard. New Haven: Yale University Press, 1932. pp. 421.

On October 14, 1926 a mail truck was held up in Elizabeth, New Jersey by a gang of seven bandits. Machine guns were used to overcome the guards and over \$150,000.00 was taken from the truck. On April 11, 1927 James Sweeney was put on trial for the crime before Supreme Court Justice Kalisch. He was found guilty and sentenced to life imprisonment. In November 1928, Sweeney was freed due to the confessions of the real bandits and proof that the chief witness for the prosecution had been guilty of perjury. The State of New Jersey had obtained the conviction of an innocent man. Beyond the release from prison, he received no redress for the injury done him.

Sixty-five such wrongful convictions have been chosen for presentation, three drawn from English cases and the rest scattered throughout the United States. In thirteen cases convictions were obtained although no crime had been committed and in six of these cases the "murdered" person reappeared. In the case of Herbert T. Andrews seventeen witnesses testifying at the trial identified the defendant as the person who had passed bad checks though there was no resemblance between him and the man later proven to have committed the crimes. In the case of Will Purvis the rope round his neck slipped when the trap was sprung. He was returned to jail and only through this accident was the State of Mississippi able to vote \$5000.00 to a living man for the harm shown to have been done to him