

BOOK REVIEW

CASES AND MATERIALS ON ADMINISTRATIVE LAW. By Kenneth C. Sears. West Publishing Co., St. Paul, 1938; pp. xvi, 800.

Recent case books in the field of administrative law¹ are strong proof that the subject is assuming a respectable place in the curriculum of law schools. Law schools, too, are subject to an institutional lag; if they place a new subject in their curricula, it is none too soon. But as the saying goes, it is better late than never.

Professor Sears' book arose out of a desire to revise Freund's book.² After working on this project for some time, he came to the decision that it would be better to abandon the idea of a revision and to present a new book. We cannot quarrel with his decision, for we have often felt that, except in a rare case, posthumous revisions are subject to the suspicion that publisher and editor are trying to "cash in" on an eminent name and a successful publishing venture. In respect to a book such as Freund's, why should there not be a rule against perpetuities?

About a fourth of Professor Sears' book is devoted to a consideration of remedies, among them injunctive relief, prohibition, certiorari. This is an important practical phase of the subject, but should have been placed at the end rather than at the beginning of the book. About a hundred pages are devoted to an examination of the general nature of administrative tribunals, their methods of functioning and their subjection to judicial limitation. In Chapter III particular administrative agencies are exemplified, among them agencies dealing with taxation, immigration, health and morals, utilities, civil service. Chapter IV treats of the selection, removal and responsibility of officers; and Chapter V is concerned with the responsibility of federal, state and local governments. An appendix includes a reprint of the valuable "Working Papers on Administrative Adjudication," which was originally prepared for the Senate Judiciary Committee.

Following Freund's approach, Sears treats administrative law as "law controlling the administration, and not as law produced by the administration." This is an unfortunate, though self-imposed, limitation. It implies an essentially *negative* approach, an attempt to answer the question: "How are administrative agencies limited in their jurisdiction and functions?" Such an approach might have been justified in 1911, when Freund's first edition appeared, but is hardly warranted today. The student is entitled to be shown not only how the law controls administration, but *how administration produces law*. The negative side is only one side of the penny; why forget the other side, which is equally important and is becoming daily more and more important?

MILTON R. KONVITZ.

1. Maurer, *Cases and other Materials on Administrative Law* (1937); Stason, *Cases and other Materials on Administrative Tribunals* (1937).

2. *Cases on Administrative Law* (1911), revised 1928.