

as well as other parts of the book may be read and enjoyed by lawyer and layman alike.

Part III contains five appendices which are of passing interest to the casual reader. The student of Holmes will find the names of Holmes' colleagues; a numerical table of Holmes' opinions; and a table of his dissenting opinions. Many another interesting statistic is contained in these appendices.

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STUDY OF STATE ADMINISTRATIVE AGENCIES IN NEW JERSEY. By Clark Crane Vogel. Directed by Nathan L. Jacobs. 1941. pp. 283.

This study of administrative agencies in New Jersey presages the beginning of a new era in literature on administrative law. The pioneers in this branch of the law, having shattered the enemy's outer lines of defense, are proceeding with mopping-up operations. When the first texts on administrative law first appeared (1906—Goodnow, *Cases on American Administrative Law*; 1911—Freund, *Cases on Administrative Law*), the field seemed cut and dried. Attention was paid almost exclusively to procedure and judicial remedies. No questions of constitutionality were raised. However, Frankfurter and Davidson perceived that this growth of the law reached the very heart of the fundamental organization of governmental power. Their casebook, a crusading text, dealt primarily with the constitutional questions of the separation and delegation of powers.

These two obstacles proved the most serious to the growth, and even existence, of administrative law. The battle raged furiously, but the antagonists of administrative law have finally acknowledged defeat. The battle, however, was not over; the scene merely shifted. Attention next focussed on administrative procedures and techniques. Conceding the constitutionality of the delegation of legislative powers, how far could administrative agencies go in carrying out their functions? What safeguards were to be erected?

Later editors (Maurer 1937, Stason 1937, Sears<sup>1</sup> 1938, and Gellhorn 1940) have displayed growing concern with these procedural problems, developing the constitutional questions as mere background. The battle lines are reforming on this front of processes. Studies and law review articles have been numerous, but deal with generalities such as right to and adequacy of notice, issuance of subpoenas, sufficiency of hearing, evidence, findings. These issues, while interesting to the student, form too philosophic a study for practical application. Pragmatists are asking themselves, How have administrative procedures worked out in practice? Lawyers appearing before administrative boards, impatient with

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1. Reviewed in 5 *NEWARK L. REV.* 82 (1939) by Milton R. Konvitz.

glittering generalities, are asking, How do the boards of my particular state function?

Mr. Vogel has decided to abandon the general for the specific. In his own words, he has compiled the factual record of New Jersey agencies. The purpose of the book, however, does not stop with the imparting of information. It is submitted with the expectation that it may receive critical examination from members of the bar and public officials. The hope is made that it may form the basis of early action, both voluntary and legislative.

Realizing that many of their reading audience may be acquainted with administrative law only in general terms, the author deemed it wise to include in his book a discussion of the general problems of administrative law. Thus the growth of administrative law is detailed and attacks upon the process recounted. The constitutional issues are treated briefly with special application to the New Jersey problem. Problems of organization follow next, with emphasis on the types of agency set up, the number of members, their method of selection, tenure of office, compensation and removal from office. The important topic of administrative procedure is succinctly treated. The authors concisely mention the power of agencies to issue rules and regulations, their effect and publicity. The last topic in this first section is Judicial Review, with the attention of the reader directed to the problem of whether review shall be *de novo* or confined to questions of law.

Having acquainted his audience with the elementary background of administrative law, the author proceeds to the heart of his book: discussion of the individual agencies. It may prove a surprise to most lawyers to discover that the administrative process is not the result of a "sudden creation of a multitude of Boards, Commissions and Bureaus."<sup>2</sup> Thus of the forty-four agencies functioning today, twenty-nine were established before 1930.<sup>3</sup> The large and more important of the state agencies have been studied, viz.: the Department of Alcoholic Beverage Control, the Board of Public Utility Commissioners, the Workmen's Compensation Bureau, the Department of Motor Vehicles, the Milk Control Board, the Department of Banking and Insurance, and the State Tax Department.

In each agency, first the organic act creating the department is set out, and the constitutionality thereof reviewed. The structure of the department is delineated, with particular attention to individual problems. Emphasis is placed on that part of the agency which comes into contact with the public. The rule making activity is examined, and publications of the bureaus, if any, analyzed. The extent of judicial review of the boards' determinations is indicated. Probably the most important part of this section to the departments themselves is the part devoted to conclusions drawn in regard to each bureau. The analyses are replete with

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2. Kaufman, *Is the Administrative Process a Fifth Column?* 6 JOHN MARSHALL L. Q. 1 (1940).

3. P. 242.

forms and with statistics concerning the kind and number of hearings, their length, and disposition.

The third part of the study discusses again the general problems raised—Part I, with application to New Jersey practice. In addition to the various recommendations made, the authors suggest the creation of an independent administrative reviewing tribunal to curb the tremendous power afforded to agencies. This tribunal would review on the record determinations made by state agencies. Review would not be completely *de novo* but would be restricted to questions of law, of jurisdiction, of procedure, and of support of the agency's determination by substantial evidence.

The proposal made for the establishment of this tribunal is, it is submitted, an admirable one. The review of administrative law questions would be placed in the hands of experts, and the expedition of review hearings would be aided. The great question of constitutionality raises itself, but it is to be hoped that the courts, impressed with the necessity of the situation, view this encroachment on the Supreme Court's jurisdiction with a kind eye.

The author, though, cognizant of the advantages of administrative agencies, also sees their bad points.<sup>4</sup> Through his scholarly reviews, sometimes personal complaints of the aloof attitude of certain administrators shine forth. Thus one is sympathetically impressed by the statement,<sup>5</sup> "To do this [study agencies scientifically] adequately, in the absence of subpoena power or distinct prestige, is a difficult task and requires extreme cooperation." Readers must distinguish, however, between defects in systems and defects in individuals.

One must deplore the excessive quotations from authorities in Part I. Hardly a page passes that does not contain a substantial extract. This practise may be justified on the ground that Mr. Vogel has found it necessary to bolster his statements of administrative law principles by verbatim quotation from recognized, nationally-known experts. This fault, however, is far from serious.

More far-reaching is the failure to discuss the doctrine of *res judicata* as applied to administrative law. This precept, of great importance to the practising administrative lawyer, is mentioned only in the chapter on the Workmen's Compensation Bureau (p. 138).

The author might also have devoted more space to the use of other methods of judicial review other than the writ of *certiorari*. Other prerogative writs—*mandamus*, *habeas corpus*, prohibition, and *quo warranto*—are mentioned in a single sentence. While *certiorari* is usually provided in the organic act of the agency as the method of review, some acts are silent on this subject. A recital of when other prerogative writs are available and their efficacy might have proved helpful.

Mr. Arnold C. Rood, in his review of Gellhorn's "Administrative Law Cases

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4. P. 6.

5. P. 10.

and Comments," stated:<sup>6</sup> "It is believed that the student could profitably supplement his study of Professor Gellhorn's book by an independent library research investigation of one of the many state or federal administrative agencies. Such investigation, under the supervision of the instructor, would provide the student with invaluable training when later as a practitioner he is called upon to practise before that or any other administrative tribunal." The work under discussion provides this library research admirably. It is a "must" for administrative law students and lawyers.

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6. 20 BOSTON U. L. REV. 802 (1940).