

Book Reviews

THE MARCH OF THE BUREAUS

SOCIAL POLITICS AND MODERN DEMOCRACIES, by *Charles W. Pipkin*. New York: The MacMillan Co., 1931. Two vols. Pp. xvi, 377; vii, 417.

LEGISLATIVE REGULATION, by *Ernst Freund*. New York: The Commonwealth Fund, 1932. Pp. xvi, 458.

TRENDS IN PUBLIC ADMINISTRATION, by *Leonard D. White*. New York and London: McGraw-Hill Book Co., 1933. Pp. viii, 365.

THE GROWTH OF THE FEDERAL GOVERNMENT 1915-1932, by *Carroll H. Woody*. New York and London: McGraw-Hill Book Co., 1934. Pp. xiii, 577.

ADMINISTRATIVE LEGISLATION AND ADJUDICATION, by *Frederick F. Blachly* and *Miriam E. Oatman*. Washington D. C.: The Brookings Institution, 1934. Pp. xv, 296.

JUDICIAL CONTROL OF THE FEDERAL TRADE COMMISSION AND THE INTERSTATE COMMERCE COMMISSION 1920-1930, by *Carl McFarland*. Cambridge: Harvard University Press, 1933. Pp. vii, 214.

THE PARLIAMENTARY POWERS OF ENGLISH GOVERNMENT DEPARTMENTS, by *John Willis*. Cambridge: Harvard University Press, 1933. Pp. 214.

THE INTERSTATE COMMERCE COMMISSION, by *I. L. Sharfman*. New York: The Commonwealth Fund, 1931. Vols. I & II. Pp. xvi, 317; xiv, 533.

The multiplication of administrative boards, bureaus, commissions and departments in the executive branch of the government and the increasing extent to which private persons and property are being subjected to the control of these agencies have, of course, been subjects of remark on every hand in recent years. Legal literature dealing with the constitutional and procedural aspects of this development naturally has been especially abundant.¹ As yet, however, there exists no single book or small number of books containing an adequate survey and analysis of either the general or the legal problems involved.²

With "New Deal" agencies continuing to function in the United States

¹ Many of the better legal books and articles are cited in *McFarland, Administrative Agencies in Government and the Effect Thereon of Constitutional Limitations* (1934) 20 A. B. A. Jour. 612.

² A pioneer work, which is still useful because of its clarity and the well-rounded nature of the author's view of the subject, is *Goodnow, Principles of the Administrative Law of the United States*, published in 1905. *Freund's Administrative Powers over Person and Property* (1928) is an analytical and comparative study which is indispensable to the thorough student; but its difficult style and newly-devised terms await translation into simpler language in order to give currency to the author's original thinking. *Dickinson's Administrative Justice and the Supremacy of Law* (1927) is an excellently-written work which casts the growth of executive control against the background of political theory and discusses particularly the matter of judicial review of administrative determinations. See book reviews (1928) 37 Yale L. J. 536 and 13 St. Louis L. Rev. 229.

and a permanent social security program proposed, involving the creation of new agencies in the Federal government and in the several states, the need for an understanding of the development of executive control and of the manner of its operation has, of course, greatly increased. Knowledge of this subject, moreover, must be reasonably up-to-date in order to be useful. The books listed at the head of this review probably furnish as good a basis for a general acquaintance with contemporary aspects of the problem of executive control as can be found outside the scattered pages of numerous essays in law reviews. It will be the purpose of this review to indicate the contribution which each of these volumes makes rather than to give a minute critical appraisal of the methods and thought of the authors.

The development in social legislation now being advocated in the United States if it takes place, will to a large extent duplicate earlier developments in Europe. It is in England and in France that private capitalism and democratic theories of government, akin to those in the United States, have conditioned the advance of political control. The experience of these two nations, therefore, is of especial value in any attempt to anticipate the course of events in this country if present governmental tendencies continue to be followed. It is that experience which Professor Pipkin summarizes in his two volumes, basing his discussion not upon direct study of the causes and effects of social legislation but upon the legislation itself and upon parliamentary debates and to a lesser extent upon political pronouncements and controversies, as reflections of national needs and policies. The result is a most interesting treatment of the spirit and tendencies of the institutions of the two countries, if not of their adequacy in the deepening crisis which confronts western civilization.

In England, of course, the development of factory acts, of minimum wage and industrial disputes legislation, and of a system of social insurance and security have extended over a longer period of time than in France, both on account of the earlier industrialization of England and because of the absence of governmental overturns to interfere with the functioning of parliamentary institutions. Although in England, as Professor Pipkin makes clear, the political motive-power was supplied first by the Liberal and then by the Labor Party, his detailed presentation shows that important legislative measures were adopted under the immediate auspices of all parties. The effect upon the reader is an overwhelming sense of the inevitability of increasing far-reaching and detailed governmental control, made necessary by inescapable facts. Demands advanced by reformers or by the victims of industrialization; rudimentary legislation brought forward to cope with the abuses; and modification and substitution of laws to extend their benefits and meet the needs of efficiency in administration have followed each other in unending succession. The size of the civil service, of course, has progressively increased as its powers have become broader and more numerous. There is as yet no indication that the United States approaches the problem of providing social security with even a remote appreciation of the measures which will be required, if English experience furnishes a guide, in order to provide an adequate

administration. The hope that the state legislatures may be relied upon to carry out the benevolent wishes of a small Federal bureaucracy offering bribes for good behavior seems little short of fantastic.

The French development, partly because of the tempestuous character of French politics and the resulting division of reform groups along theoretical lines, has been much less steady than the English. Nevertheless the twentieth century, and especially the post-war period, has yielded a harvest of social legislation which has provided—although conservatively—all of the elements of social security except unemployment insurance. In some respects French political conditions are more analogous to those in the United States than the English. Deep political cleavages are not dissimilar in their effect from the economic and sectional divisions in the United States. In both countries there has been less possibility of deliberation by a single deciding body than is the case in England's parliament. Eight years elapsed between the initiation of the French government's social security program in 1920 and its final enactment. In addition to the government departments and the two chambers of the legislature, Professor Pipkin lists 26 important national economic organizations which contributed formally to the consideration of the measure. "The discussion," he says, "was a national inquest." This complicated machinery produced a definite outcome which probably reflected the true will of the nation. In the United States similar machinery, even on an *ad hoc* basis, does not as yet exist. Presidential committees of experts far removed from the people, supplemented by a Congress of geographically-chosen representatives, often jealous of invasions of state prerogatives and masking the economic constituencies which they really wish to serve, do not bring forth true national decisions. There is much for Americans to ponder in both of Professor Pipkin's volumes.

Turning from the operation of economic and political forces in government to matters of legislative technique, one comes inevitably to the late Professor Freund's volume on Legislative Regulation. As is the case with a number of other recent penetrating legal studies, including that of the Interstate Commerce Commission by Professor Sharfman, this one owes its existence to the Commonwealth Fund, whose Committee on Legal Research has displayed an uncanny ability to select competent students of vital problems. There exists no other book which covers the ground traversed by Professor Freund. Parliamentary law, of course, has received treatment in treatise form, and the interpretation of statutes is an old subject of doubtful value. Manuals of style for the legislative draftsman can be found—although only in skeleton form. The machinery of lobbies, committees, caucuses and rules whereby legislative bodies are controlled has not gone unnoticed. The functions of legislation in relation to judicial decision have been discussed by writers upon jurisprudence. But the painstaking examination of legislative enactments as a means of control has remained for Professor Freund to undertake. Such matters as the types of laws adapted to particular purposes; the alternative enforcement devices which can be included; and the means of conferring greater or less discretion in administration are given extended treatment. As in his earlier

work on administrative law, Professor Freund pays the penalty of being the pioneer in a new field. His style is not easy to begin with and his use of novel terms to designate categories which he has worked out for the first time, adds to the difficulty of reading his work. But one who has the patience to dig for the material that is there will find the reward well worth the effort. In the drafting of legislation to govern administrative agencies it is all but indispensable.

The national self-appraisal instituted by President Hoover and carried out by committees appointed by him has resulted not only in the monumental two-volume works on Recent Economic Changes and Recent Social Trends but also in a number of monographs which grew out of the researches leading to the second of these publications and which amplify the subjects treated within it. Among these are the books by Messrs. White and Woody. Professor White, now one of the Federal Civil Service Commissioners, discusses largely those factors in terms of which the competence of the bureaucracy to perform the tasks entrusted to it must be judged. He deals principally with the redistribution of power among the local governmental units, the states, and the Federal Government, with the trend toward centralized control within the administration in such matters as finance and personnel; with the growth of professionalism in the public service; and with the development of research in administration. The trends in recent years toward centralization, professionalization, unified responsibility, and research are clear; and the story which Professor White tells is interesting in the extreme. He does not attempt to say whether past progress justifies confidence in the future, but it is clear in what directions further advances must take place if administrative agencies are to perform increased duties successfully.

Mr. Woody's monograph, as its title indicates, is a detailed study of the expansion of the Federal Government in terms of functions, finance, and personnel. The story is told with extraordinary completeness. Except for the portions of the book which summarize the information contained in it, it has value chiefly as a reference work, supplementing in this regard the monographs of the Institute for Government research upon which it draws to a large extent. It appears that in a total of Federal expenditures, excluding debt retirement, which in terms of 1915 dollars expanded 170 percent from 1915 to 1930, the expenditures for civil functions fell slightly shy by doubling and accounted for only 18 percent of the increase. In terms of personnel the increase in the civil departments was 30 percent, from 476,363 to 608,915.³ A tabular summary of new agencies and new activities brings together the increased functions which the civil administration performs. Since a relatively small increase in personnel takes care of an impressive addition of functions and of an expenditure which has practically doubled, it seems fair to assert that there has been a considerable growth in efficiency.

With the book by Blachly and Oatman one turns from historical and

³ Through a typographical error, this figure is erroneously given as 808,915 in the table on page 48.

practical to political and legal considerations. The authors wisely point out near the beginning that the problems with which they are concerned and which have aroused such widespread discussion of administrative control, are not the inevitable consequences of modern economic developments. It is because private enterprise is accepted and the attempt is made to regulate business from without that the government comes to bear in so many new ways upon "definite rights." Hence the phenomena of "administrative legislation and adjudication," seemingly intruding upon the spheres of the traditional law-making and judicial departments. The authors accept the orthodox ideas with regard to these functions. The making of rules and regulations is legislative; the making of decisions affecting definite rights by "an administrative authority acting in a judicial capacity . . . is really judicial in nature"; and "for the same administrative officers to be made legislators, judges, and administrators in the same case has tended to produce the bad results which have always followed the concentration of those powers in a single authority." Nevertheless, of course, the authors recognize the necessity of a considerable redistribution of governmental power and pay tribute to the administrative personnel which has prevented abuses from becoming worse than they have. Their book contains no data upon which the merits and demerits of the existing administrative control might be judged; but it does include numerous suggestions in this regard as well as proposals for reform which probably have practical as well as conceptual soundness.

Dr. Blachly and Miss Oatman confine their study to the Federal Government. Its principal interest lies in the brief but complete survey which it contains of the extent to which Federal administrative agencies are at present exercising the powers with which the authors are concerned. Unlike the other books included in this review, this volume covers the New Deal. No similar body of concentrated information appears anywhere else in print so far as the reviewer is aware.

Mr. McFarland's volume, like that of Mr. Willis, is another in the important series of Harvard Studies in Administrative Law. It deals with the question of the relation between the courts and developed administrative agencies, of which the author selects two of the most important for study. The decisions of the Interstate Commerce Commission and of the Federal Trade Commission have received vastly differing treatment at the hands of the courts. The reasons for this difference are of significance in the devising of future schemes and in the revision of existing schemes of administrative control. Mr. McFarland traces the reasons through painstaking study of the applicable statutes, doctrines, decisions, and judicial and administrative techniques. His conclusions cannot be detailed in this brief review; but they should enter prominently into future consideration of control measures. The author's summary in Chapter II of the doctrinal background of judicial review of administrative decisions is perhaps the best brief introduction to the entire problem of administrative control that could be recommended, at least to the lawyer who brings a background of some familiarity with constitutional law to his consideration of the subject.

In *The Parliamentary Powers of English Government Departments* Mr.

Willis deals with the question of administrative rule making unchecked by judicial review, which has aroused such a furor in England in recent years, with Lord Hewart leading the attack in "The New Despotism." The bureaucracy has received more or less a clean bill of health from the Committee on Ministers' Powers, which reported in 1932; but Mr. Willis is not impressed with the utility of the somewhat strengthened judicial review which the committee recommends. Determination of administrative jurisdiction by suitable administrative tribunals holds for him no more terrors than similar determination of their own jurisdiction by the courts. His scholarly survey of the legislation and decisions bearing upon the question reveals how deep-seated is the need and how numerous are the occasions for administrative discretion in rule making no less than in other directions.

After all the general studies and surveys of administrative control have been taken into account, there will remain a need for intensive studies of the functioning of particular administrative agencies. There have been a few such studies, but no preceding one has been as ambitious as Professor Sharfman's projected four-volume work on the Interstate Commerce Commission, of which the first two volumes have appeared. The Interstate Commerce Commission is of all American administrative agencies the one with the longest and most honorable history and with the largest aggregate of powers. Again it is not possible in a review such as this to go into details regarding Professor Sharfman's treatment of his subject. Suffice it to say that on the legal side his survey of the powers of the Commission and its relation to the courts leaves little to be desired, while his estimate of the usefulness of the Commission as a device for controlling the transportation industry is enlightened by the equipment which he brings to his study in his capacity of economist. The possibilities of bureaucratic control of private enterprise are nowhere better revealed than in these two volumes.

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THE DEVELOPMENT OF INTERNATIONAL LAW BY THE PERMANENT COURT OF INTERNATIONAL JUSTICE, by *Hugh Lauterpacht*. New York: Longmans, Green and Co., 1934, pp. IX, 112.

This volume consists of a series of lectures delivered at the Graduate Institute of International Studies at Geneva. It is a significant contribution based upon an exhaustive study of the judgments and advisory opinions of the Permanent Court of International Justice. With the major aim of the Court as one of several instruments for the maintenance of peace, the author is concerned only incidentally, in part because there is no exact way of even estimating the extent to which the Court has been successful in performing this function. He concentrates on the second basic function of the Court and attempts to measure and evaluate the work of the Court in the development of international law.