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Book Review. Sears, K.C., Cases and Materials on Administrative Law

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Supplanting, as it does, Professor Ernst Freund's pioneering work in the publisher's American Casebook Series, this new book is said by its editor to be fashioned upon the same conception; namely, that administrative law should be "treated as law controlling the administration and not as law produced by administration." Professor Sears carries out this idea by devoting his first chapter, 205 pages in length, to the judicial remedies which bear upon administrative action; but the remainder of his work, despite its basic conception, contains rather more than the usual proportion of material relating to the functioning of administrative agencies themselves. Thus the section of Chapter Three which is devoted to immigration opens with ten pages of text outlining the methods of the Bureau of Immigration; a substantial block of cases, drawn from the Interstate Commerce Commission Reports, heads the material on utilities; a number of reparations cases decided by the Bureau of Agricultural Economics under the Perishable Agricultural Commodities Act are included; the regulations of the Bureau pursuant to this Act are reproduced in an appendix; and thirty-one pages in another appendix are devoted to the analytical portion of Dr. Frederick Blachly's recent Working Papers on Administrative Adjudication, with its outline and its classification of federal agencies according to the manner of their functioning. Professor Sears apparently recognizes that such a sampling of material does not serve to convey an adequate picture of administrative processes or to shift the emphasis in a casebook away from judicial decisions.

Professor Sears also continues Freund's second major conception in regard to the scope of a course in administrative law, that it should exclude as far as possible "constitutional problems, which are taken care of in other courses." The consequences of following this theory of curricular organization are important and are evident in Professor Sears' selection of material. The separation of powers receives mention only incidentally in the opinions of course in certain cases; the delegation of rule-making power, the exercise of "judicial" functions by administrative agencies, and the vesting of administrative discretion in courts do not receive explicit treatment; and, in consequence, such landmark cases as Panama Refining Co. v. Ryan,1 Crowell v. Benson,2 and St. Joseph Stockyards Co. v. United States3 disappear entirely or receive only footnote mention. To some it will seem that administrative law without these cases is the drama without the chief characters; to others, no doubt, their absence will make it more possible to get down to the business in hand. Other leading cases, such as Ohio Valley Water Co. v. Ben Avon Borough4 and the Morgan5 decisions, are present in Professor Sears' book.

1 (1935) 293 U. S. 388.
2 (1932) 285 U. S. 22.
3 (1936) 298 U. S. 38.
4 (1920) 253 U. S. 287.
5 (1936) 298 U. S. 468.
In undertaking the presentation of materials relating to the functioning of administrative agencies and the review of their decisions by courts, Professor Sears follows a very different analysis from Freund’s. Where Freund made use of such concepts as types of orders, types of discretion, licensing, summary action, private right, and governmental bounty about which to group his materials, employing a fairly minute outline for the purpose, Professor Sears deals in a general chapter of 107 pages (Chapter Two) with the undifferentiated subject of “The General Nature of Administrative Tribunals and Agencies—The Methods by Which They Function and Are Subjected to Judicial Limitation.” He then launches in Chapter Three into a presentation of materials relating to administrative agencies in a number of fields, devoting a section to each. Taxation, immigration, health and morals, workmen’s compensation, business, utilities, and civil service come in for attention here. The chapters that follow are devoted to the selection, removal, and tort liability of officers and to the tort liability of governments.

In relation to the procedural aspects of governmental regulation of private persons and property by administrative agencies, which for most students is the core of administrative law, Professor Sears’ third chapter contains the bulk of the material which he offers. The selection here is well designed for teaching purposes, so far as the 229-page space allotment for this material permits. Of necessity the subjects covered constitute merely a sampling of those that might be included and some of these, notably the Securities and Exchange Commission and the Communications Commission, are accorded only a brief list of references. The section on Health and Morals has only a case on procedure under the English Housing Act, followed by five cases upon licensing procedure in such fields as professional regulation and liquor control. But, in general, Professor Sears’ material affords a sufficient basis for classroom consideration of the topics selected. In most of the sections it proceeds in orderly sequence from questions of notice through those of administrative procedure to the problems of judicial review or correction. In some instances, notably the section on Workmen’s Compensation, well-selected text passages aid in presenting the subjects understandably.

The theoretical background for this practical material must come from Chapter Two. This chapter gets off to a bad start with a two-page alphabetical list of federal agencies, which seems especially useless in the presence of Dr. Blachly’s classification in the appendix. Judge Rosenberry’s opinion in State ex rel. Wisconsin Inspection Bureau v. Whitman furnishes an excellent introductory text. Quotations from Arthur T. Vanderbilt and O. R. McGuire upon the scope of judicial review present both sides of that problem excellently. Constitutional restrictions upon the scope of review are lightly suggested in a footnote. Then follow cases from many fields of administration which are designed to bring out the fundamentals of procedure and judicial review. The most adequate group of these relates to the inquisitorial powers of administrative agencies. As a whole, the chapter seems to lack the completeness and unity which a thorough consideration

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6 (1928) 196 Wis. 472, 220 N. W. 929.
of relevant constitutional questions would give it. Even references to the outstanding literature upon these questions are omitted. It is difficult to conceive of these topics receiving adequate treatment in some other part of the curriculum, divorced from the materials that are presented here. They form a proper part of administrative law itself.

The first chapter, on Remedies, seems more complete than the others. Since Professor Sears assumes the burden of presenting the extraordinary legal remedies in the course on administrative law, the sections devoted to them necessarily contain many cases which do not relate to the subject of the book. Again the question of the desirability of the scope which is given to the materials turns upon questions of curricular organization.

Necessarily the value of a volume such as this depends upon the type of administrative law course that is envisaged by the valuer. On the whole, assuming the curricular organization which Professor Sears accepts, the book will be satisfactory to those who contemplate a course that stays fairly close to the practicalities of every-day affairs. Its attitude is well balanced, giving little ground for objection either to believers in administrative control or to objectors to administrative power. Only one criticism can be entered on this score. In a volume that omits all other mention of the Food and Drug Administration, it seems regrettable that the abusive language of Representative O'Malley with reference to this agency, reproduced on page 471 from the Congressional Record, was dignified by inclusion. Presentation of the relative merits of Federal Trade Commission and Food and Drug Administration control of the false advertising of food, drugs, and cosmetics scarcely justifies reproducing unanswered the language of an insulting polemic. Perhaps, however, the language was thought to answer itself.

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Dr. Semmes—the temptation to call him Captain Semmes is of course almost irresistible—has put together material that will be read with absorbed attention by all who are interested in American legal history, or in American history in general. The ten chapters here give in vivid detail, much of it unpleasant, as the cover flap admits, a number of facts concerning many aspects of the life of colonial Maryland.

The book is in no sense a Newgate Calendar, although many of the persons described, including a godly portion of the dignitaries of the colony, would not have felt out of place in Newgate and, one may guess, missed that formidable dungeon by inches. Besides the record of the criminal history of the colony, the book gives us abundant material about economic and social life, about the practice of law and medicine, the livestock on which people lived, and the clothes they wore. To read the book through is to get