

Spring 1948

**Attorney General's Manual on the Administrative Procedure Act,
Prepared by the United States Department of Justice; The Federal
Administrative Procedure Act and the Administrative Agencies,
Vol. VII of the New York University School of Law Institute
Proceedings**

Ralph F. Fuchs
Indiana University School of Law

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Administrative Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Fuchs, Ralph F. (1948) "Attorney General's Manual on the Administrative Procedure Act, Prepared by the United States Department of Justice; The Federal Administrative Procedure Act and the Administrative Agencies, Vol. VII of the New York University School of Law Institute Proceedings," *Indiana Law Journal*: Vol. 23 : Iss. 3 , Article 16.

Available at: <https://www.repository.law.indiana.edu/ilj/vol23/iss3/16>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

BOOK REVIEWS

ATTORNEY GENERAL'S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT. Prepared by the United States Department of Justice. Leavenworth: Federal Prison Industries, Inc., Press, 1947. Pp. 139.

THE FEDERAL ADMINISTRATIVE PROCEDURE ACT AND THE ADMINISTRATIVE AGENCIES. Vol. VII of the New York University School of Law Institute Proceedings, 1947. Pp. viii, 630.

With the adoption of the Federal Administrative Procedure Act in June, 1946,¹ the contentious subject of administrative law entered a new phase. For better or for worse, the provisions of the new code become the starting point for shaping the procedures of the agencies of the Federal Government which issue regulations or orders or take action having effects outside the Government. The Act will also be the primary guide for the courts in passing upon the methods of these agencies. It supersedes the legislation establishing the agencies and conferring their functions upon them, in so far as there is conflict; but it invokes that legislation upon some points, including the fundamental one of when administrative hearings are and are not required.

The Act, while new, is built upon the foundation of previous knowledge, experience, and discussion, notably the report of the Attorney General's Committee on Administrative Procedure.² It resembles most largely the bill proposed by the so-called "minority" of that Committee,³ but

-
1. 60 Stat. 237, 5 U.S.C. §§1001-1011 (1946).
 2. This report, a volume of 474 pages, rendered in 1941, was published initially by the Department of Justice and afterward as Sen. Doc. No. 8, 77th Cong., 1st Sess. (1941). It is now out of print. Preparatory to the report and as a basis for it, the Committee's Director and staff, on the basis of first-hand investigation and study of documents, prepared 27 "Monographs" with regard to the procedure of as many of the major federal agencies. These were published as Sen. Doc. No. 186, 76th Cong., 3d Sess. (1940), in 13 parts, and Sen. Doc. No. 10, 77th Cong., 1st Sess. (1941), in 14 parts. The parts, so far as still available, may be purchased separately from the Government Printing Office.
 3. The Committee did not actually split into opposing groups. Its report was unanimous, except that the "additional views" of four members contained proposals for the reform of administrative procedure, particularly by legislation, going beyond those advocated by the Committee as a whole. Such of the Committee's recommendations as called for legislation were embodied in a bill

its terms are the result of long-continued subsequent deliberation. Essentially, the Act as it stands represents an adjustment between the proposals of lawyers wishing to attach procedural safeguards to the processes of Federal agencies bearing upon private interests⁴ and considerations advanced by the representatives of those agencies in order to safeguard the effectiveness of the work required of them by Congress. The present Act was introduced as S.7 and H.R. 1203, 79th Congress, 1st Session, and underwent a process of revision in the committees of both houses as a result of suggestions from the administrative agencies, which the Senate Committee on the Judiciary invited, and of conferences in which representatives of the Attorney General, reflecting the views of the Executive Branch, and private parties both participated.⁵ The resulting measure was adopted unanimously in both houses.⁶

Because of the process of evolution through which the new Act passed before its adoption, it contains provisions with doubtful meaning. Problems of interpretation here spring not only from the inevitable difficulty of construing words of broad import in a general enactment, but also from the somewhat novel devices employed to accommodate opposing points of view. Consequently, despite the Act's foundation in previous experience, the lawyer who wishes to understand it must conduct his study with some freedom from

proposed by what has since been called the "majority." More far-reaching proposals of three members of the "minority" were embodied in a separate bill which they offered. Both bills were introduced in the 77th Congress at the 1st Session. After hearings upon them and a third bill, conducted by a sub-committee of the Senate Judiciary Committee (77th Cong., 1st Sess., Hearings on S. 674, S. 675 and S. 918, April 2 to July 2, 1941), the matter of administrative procedure legislation was pushed aside by World War II.

4. A number of administrative procedure bills and bills providing for an administrative court to review agencies' acts were introduced in Congress, beginning in 1935. The most significant of these emanated from the American Bar Association's Special Committee on Administrative Procedure, established in 1933. An enumeration of them and an account of their relation to the Act may be found in Sen. Doc. No. 248, 79th Cong., 2d Sess., 188 (1946), and in 31 A.B.A.J. 615 (1945). These bills formed the principal channel through which the practicing bar's ideas as to the reform of administrative procedure were brought to bear. The Bar Association afterward endorsed the bill proposed by the minority of the Attorney General's Committee. 66 A.B.A.Rep. 401-404 (1942).
5. See Sen. Doc. No. 248, 79th Cong., 2d Sess., 190-191, 394 (1946).
6. Id. at 344, 406, 423.

previous concepts and with strict attention to the Act's own terminology.

The Act, in brief, provides for six major aspects of the functioning of federal administrative agencies: (1) the publication in the Federal Register by all agencies, whether or not subject to the Act's remaining provisions, of accounts of their organization, course and method of performing their functions, and substantive general rules, except such matters as relate solely to internal management or must be kept secret in the public interest;⁷ (2) the conduct of rule-making proceedings by agencies with opportunity for interested persons to participate by petitioning for changes and by submitting data, views, or arguments;⁸ (3) certain "ancillary" procedural points, such as the right to appear by counsel, to have matters disposed of by agencies "with reasonable dispatch," etc.;⁹ (4) the conduct of rule-making and adjudicatory proceedings, in so far as required by other statutes to produce rules or determinations based "on the record after opportunity for an agency hearing," in accordance with specific requirements laid down;¹⁰ (5) judicial review of agency action;¹¹ and (6) protection to the independence and status of examiners to be used by the agencies in the conduct of hearings.¹²

A considerable body of literature surrounding the Act has already come into existence. Some of it is more useful for research into the legislative history of the Act and for light upon the meaning of particular provisions than it is for an understanding of the measure as a whole.¹³ Some

-
7. Section 3. This section also requires opinions and orders to be published or made available to public inspection and official records to be made available to parties concerned, except "information held confidential for good cause found."
 8. Section 4. The section does not apply, for the most part, to interpretative or procedural rules. Military, naval, and foreign affairs functions, together with certain others, are excepted altogether from this and the other principal sections of the Act, except that relating to judicial review.
 9. Section 6.
 10. Sections 4, 5, 7, 8.
 11. Section 10.
 12. Section 11.
 13. The derivation of the Act, its text, and its legislative history in the 79th Congress are given in Sen. Doc. No. 248, 79th Cong., 2d Sess. (1946), nn. 4, 5, 6, *supra*, a pamphlet of 458 pages compiled by the Senate Committee on the Judiciary and obtainable from the Government Printing Office for 50¢. The document

of it is laudatory or critical in nature,¹⁴ rather than expository from a practical standpoint. Some of it, on the other hand, is designed primarily to aid lawyers within the Government and outside in the initial task of understanding the Act and in the further task of making it work as smoothly as possible. No piece of writing that has as yet appeared has succeeded, however, in simplifying the Act's structure or the content of its provisions.¹⁵ When these have been mastered in a general way from the Act itself, aid may be derived from a well-written text which throws light on the meaning of some of the more cryptic provisions by reference to their history and to the purposes they were designed to meet. The two works here under review probably afford the best available means of such study of the effect of the Act's provisions.

The Attorney General's Manual is a running commentary upon the Act, section by section, which enlarges upon the meaning and practical consequences of the several provisions from the point of view of government administrators attempting to comply with its requirements. As the Attorney General's introduction states, the Manual was written in the Office of the Assistant Solicitor General, which played a large part on behalf of the Attorney General in the drafting of the Act, in order to afford guidance to the various federal administrative agencies. It is now made generally available because of great public demand for it. The New York University volume consists of the proceedings of an institute conducted by that institution's School of Law in February, 1947, at which addresses by 22 dif-

includes successive prints of the Act, the committee reports in both houses (Sen. Rep. No. 752; H. R. Rep. No. 1980), the discussions on the floor of Congress, and as an appendix to the Senate report, a detailed commentary by the Attorney General upon the Act which is also printed as an appendix to the Attorney General's Manual here under review.

14. Cohen, "Legislative Injustice and the Supremacy of Law" 26 Neb. L. Rev. 323 (1947), is highly critical. Much material in the American Bar Association Journal has been laudatory.
15. An excellent account of the Act in the light of its history and purposes is Nathanson, "The Administrative Procedure Act—Some Comments" 41 Ill. L. Rev. 368 (1946). Other good accounts are Brown, "The Federal Administrative Procedure Act" [1947] Wis. L. Rev. 66, and Note, "Federal Administrative Procedure Act—Codification or Reform?" 56 Yale L. J. 670 (1947). A summary of the Act and commentary upon it, 32 A.B.A.J. 377 (1946), is brief, clear, and informative.

ferent speakers, followed by discussion from the floor, occupied sessions on eight successive days.

The New York University addresses fall into three categories: those that deal with the history, purposes, and underlying theory of the Administrative Procedure Act; those that discuss the general aspects of the Act; and the larger number that deal with the effects of the Act upon the procedure of specific agencies. In the first category belong Dean Vanderbilt's discussion of the legislative background of the Act, opening the proceedings, and two analyses and appraisals of the Act as a whole, one of which is contributed by Carl McFarland, chairman of the American Bar Association's Committee on Administrative Law from 1941 to 1946, and the other by Dr. Frederick F. Blatchly, the Brookings Institution's well-known writer on the subject of administrative procedure. The second category of contributions mentioned above, which closes the volume, consists of a discussion of rule-making under the administrative procedure act, by David Reich of the Office of the Assistant Solicitor General, who is also one of the two principal compilers of the Attorney General's Manual; a discussion of adjudication under the Act by Ashley Sellers, who as Special Assistant to the Attorney General guided the Government's participation in the preparation of the Act in its final stages; and a discussion of the judicial review provisions of the act by John Dickinson, well-known lawyer and student of administrative law. Between the two groups of general discussions just mentioned are 14 talks with reference to the effects of the Act upon as many different agencies. These are the Federal Communications Commission, the Civil Aeronautics Board, the Bureau of Internal Revenue, the Federal Power Commission, the Post Office Department, the Securities and Exchange Commission, the Patent Office, the Immigration and Naturalization Service, the Interstate Commerce Commission, the Department of Agriculture, the Federal Security Agency's Food and Drug Division, the Federal Trade Commission, the Department of Labor, and the National Labor Relations Board. Most of the discussions of specific agencies are contributed by members of their several law offices; but three are given by agency administrators who are also lawyers and three are contributed by private practitioners having experience with the agencies in question.

Although these discussions of the Administrative Procedure Act's impact upon specific agencies are useful for study of those agencies and reveal significant implications of the Act, they are less valuable in the initial attempt to understand the Act's provisions than the more general ones, particularly the final three by Messrs. Reich, Sellers, and Dickinson. The three concluding essays should, therefore, be read first by one who, having studied the Act itself,¹⁶ wishes to pursue its meaning further. These may be followed by the first three discussions contributed by Messrs. Vanderbilt, McFarland, and Blatchly, for the purpose of obtaining critical views which find reflection in the subsequent discussions of particular agencies. If these discussions are read later with general considerations in mind, study of the volume will probably attain its maximum usefulness for the lawyer.

It may be remarked in passing that the discussions of particular agencies in the New York University volume are not designed to acquaint the reader with the procedures of those agencies. For that purpose the agencies' rules of practice, to be found in the Code of Federal Regulations,¹⁷ are the primary source material. In their present form they translate the requirements of the Administrative Procedure Act, along with those of the specific statutes governing the agencies, into precise codes. The New York University essays are in effect commentaries upon how this has been done, which assume a knowledge on the reader's part of the general outlines of agency procedure. They are, naturally, of uneven thoroughness and quality; but they are worth perusing. Slight ambiguity regarding the Act occasionally enters into the discussions, for which the reader must be on his guard.¹⁸

16. Each of the volumes here under review contains the text of the Act in an appendix.

17. They are usually also obtainable in convenient form from the agencies themselves. The descriptive material with regard to the organization, functions, and procedures of all of the federal agencies, which was required to be published by §3 of the Act, originally appeared as a 966-page supplement to the Federal Register of September 11, 1946, and has been supplemented from time to time since then. It is now available in the 1946 supplement to the Code of Federal Regulations, in 6 volumes, which adds sub-chapters dealing with these topics to the original Code.

18. For example, on pp. 207-209 occurs a discussion in regard to the Act's application to proceedings on the Post Office Department at the start of which it is stated that certain provisions

Turning now to the more detailed contributions of the publications here under review to the study of the Administrative Procedure Act as a whole, one may note first that the Attorney General's Manual is generally more thorough in its treatment than the symposium material. Since it has been prepared from a government viewpoint, its interpretations differ in a number of instances from those of other commentators, as is brought out in detail below. If these instances of possible doubt are kept in mind, the Attorney General's text can be used as a safe guide. It has been ably, and on the whole objectively, prepared. Although so technical a discussion can hardly be expected to make exciting reading, it touches upon live issues at numerous points; and to one who has followed the controversies and problems to which administrative procedure has given rise during the past quarter-century, the Manual's statement of the results which the Act achieves in these matters possesses a high degree of interest.

As Mr. Reich in particular makes clear in his contribution to the symposium,¹⁹ and as the Manual brings out in greater detail in an introductory portion entitled "Fundamental Concepts," the procedural provisions of the Act are built upon a "dichotomy between rule-making and adjudication." This is reflected not only in the separate provisions of Section 4 for rule-making in general and of Section 5 for "formal" adjudication,²⁰ but also in specific differentiations which are made by Sections 7 and 8 between "formal" rule-making²¹ and "formal" adjudication, to both of which the two sections apply. Rule-making and adjudication

apply to such proceedings when the governing statute requires a hearing. Not until the conclusion of the discussion does it appear that this is true only because the hearing requirement has been construed to include the requirement of decision upon the record of the hearing. On page 359 the statement is made that the Act requires milk marketing orders to be made on the basis of a proceeding having the same characteristics as "adversary or quasi-judicial proceedings." The statement is true in a general sense; but the reader must be wary not to understand it as an assertion that the milk marketing procedure is required to be the same as the procedure in "adjudications" under the Act. There are important differences, as will appear.

19. The same paper is published in slightly condensed form in 33 A.B.A.J. 315 (1947).
20. I.e., "adjudication required by the statute to be determined on the record after opportunity for an agency hearing."
21. I.e., rule-making subject to the same requirement as that stated for formal adjudication in n.20.

are not defined in the Act according to conventional understanding, however. The former embraces not only the formulation of general regulations but also "any agency statement of . . . particular applicability and future effect," and includes specifically "the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing."

"Adjudication" is defined as the formulation of "the whole or any part of the final disposition . . . of any agency in any matter other than rule-making" Since the definition of rule-making is as broad as it is, one experiences difficulty at first glance in perceiving what types of administrative proceedings are left as adjudication. This problem crops up at a number of points in the New York University Institute discussions; but Mr. Reich, followed by Mr. Sellers, makes the matter as clear as it can become. There exists in fact, on the basis of a sound interpretation of the Act, a large area of formal adjudication, which embraces the cease-and-desist orders of the Federal Trade Commission, the National Labor Relations Board, and a number of other agencies, together with decisions upon money claims and many varieties of license revocation and modification proceedings.

The most significant procedural differences between formal rule-making and formal adjudication under the Act are those relating to the "separation of functions." In formal adjudication, except in determining applications for initial licenses, the examiner who conducts the hearing may not "consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate;"²² nor may any officer, employee or agent "who has performed investigative or prosecuting functions for the agency in that or a factually related case participate or advise in the decision except as witness or counsel in public proceedings."²³ In a formal adjudication, moreover, with the same exception in initial license proceedings, the examiner must either decide the case in the first instance or recommend a deci-

22. Section 5(c). This provision does not apply if one or more agency heads preside, instead of an examiner.

23. *Ibid.*

sion to the agency heads who are to decide it.²⁴ These requirements do not attach to formal rule-making as defined above, including many proceedings of the Interstate Commerce Commission, Federal Power Commission, and Department of Agriculture. The adoption of the broadened definition of rule-making which exempts these proceedings, together with the exclusion of initial licensing from the same requirements, constituted the Great Compromise in the formulation of the Act. As Mr. Reich and the Manual bring out, the "dichotomy" thus established is founded upon realistic considerations; for, by and large, rule-making as now defined embraces those proceedings in which the documentary nature of most of the evidence, the technical character of the issues, and the policy considerations that enter into the decisions make it desirable for all the resources of agency staffs to be brought to bear upon the proceedings and correspondingly diminish the relative importance of the examiner's contribution. In adjudication as the Act now leaves it, on the other hand, the role of the examiner who has heard the witnesses is relatively more important; and the frequently "accusatory" nature of the proceedings calls for greater safeguards to the impartiality of the tribunal.

In order to further the impartiality of the examiner and to increase the adequacy and dignity of the oral hearing, the Act frees the examiners within an agency who participate in adjudication of supervision and direction by staff members "engaged in the performance of investigative or prosecuting functions" for the agency, thus virtually requiring that they be maintained as a separate corps. The protections to the independence and status of examiners, previously mentioned, which the Act provides, go far beyond those accorded to members of the competitive civil service generally; for an examiner may be removed by his agency only for good cause, after opportunity for formal hearing and approval by the Civil Service Commission.²⁵ The powers which the examiners enjoy in connection with hearings include the power to issue subpoenas if the

24. Sections 5(c), 8(a).

25. Sections 11, 5(2). Government employees in the competitive civil service, contrary to the general impression, are removable for causes deemed sufficient by the employing agencies, with only such procedural protection as is afforded by the right to a written statement of charges and an opportunity to reply in writing. 37 Stat. 555 (1912), 5 U.S.C. §652 (1940).

agency itself has subpoena powers,²⁶ thus eliminating any doubt concerning delegation of the function of issuing subpoenas for hearing purposes.

The separation-of-functions provision which precludes consultation outside the hearing with any person on any fact in issue gives rise to differences of interpretation. These involve, first, the meaning of "fact in issue" and of consultation and, second, the classes of persons embraced by the prohibition. As to the former, Mr. Sellers takes the extreme position that the examiner is precluded "from consulting with anyone about the case" and may not use clerical or accounting assistance in compiling monetary totals from the evidence.²⁷ The Manual²⁸ states that the examiner "is prohibited from obtaining or receiving evidentiary or factual information bearing on the issues," including expert testimony. As worded, the provision does not seem to prohibit consultation with regard to issues of law or policy. As to the persons who may not be consulted, an independent commentator has suggested that members of agency staffs are not embraced within the prohibition;²⁹ but this is a claim which is not reflected in the Manual or in the contributions to the New York University symposium.

With regard to the fundamental line between rule-making and adjudication, doubts and differences also arise. Mr. Wanner gives illustrations in his discussion of the Civil Aeronautics Board.³⁰ A critical issue, also, is whether applications for the enlargement of licenses, such as extensions of routes for carriers or of time of operation of radio stations, are "applications for initial licenses" and consequently free of the separation-of-functions requirements above enumerated, or whether they give rise to adjudications in the strict sense. Mr. Caldwell, criticising the regulations of the Federal Communications Commission,³¹ takes the latter position; Mr. Ross, speaking for the Federal Power Commission,³² and the Manual³³ state the contrary.

26. Section 7(b).

27. Symposium, 544-545.

28. P. 54.

29. Nathanson, "The Administrative Procedure Act—Some Comments" 41 Ill. L. Rev. 368, 387-390 (1946).

30. Symposium, 123-125.

31. Id. at 98-101.

32. Id. at 184-185.

33. Pp. 51-53. The discussion in the Manual adduces reasons in the legislative history and policy of the Act.

Mr. Dickinson's discussion of judicial review carefully analyzes the Act's provisions. Here again examination of the Act's terms is essential to their understanding, and conclusions cannot be free of all doubt. A reading of Section 10, which is the judicial review provision, might lead to the conclusion that the Act subjects all administrative determinations, without exception, to some form of judicial review. Mr. Dickinson's discussion discloses that this is not correct. Previous statutes, such as that governing the allowance of veterans' benefits, and judicial interpretations, such as those given to some provisions of the Railway Labor Act, still stand and specifically preclude judicial review. Equal difficulty of interpretation is presented by provisions of the Act which appear to affect the scope of judicial review of administrative action. Section 7(c) provides that "no sanction shall be imposed or rule or order be issued" in proceedings in which action is required to be upon the administrative record, "except . . . as supported by and in accordance with the reliable, probative and substantial evidence." Section 10(e) requires a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law or unsupported by substantial evidence in any case subject to the requirements" of Section 7. It can be argued that, as regards evidence points, a reviewing court might set aside agency action on the ground of procedural error where the action or the underlying findings and conclusions appeared not to be "supported by and in accordance with" what the court deems to be the reliable, probative and substantial evidence, judged upon its merits. The Attorney General's Manual³⁴ flatly denies that any such conclusion can legitimately be drawn. Standard practice prior to the Administrative Procedure Act limited the possibility of judicial reversal on evidence grounds to lack of substantiality in the supporting evidence; and the Manual cites clear legislative history to the effect that the Act was intended simply to incorporate "a general codification of the substantial evidence rule which, either by statute or judicial rule, has long been applied to the review of Federal administrative action." Mr. Dickinson does not negative this conclusion. He does, however, draw from

34. Pp. 76, 109.

the history and purpose of the Act a conclusion which, he asserts, requires a reviewing court to judge the substantiality of the evidence supporting administrative action in the light of other relevant evidence contained in the record as a whole, rather than in disassociation from other evidence. Much is said on this point in the discussion following Mr. Dickinson's paper³⁵ and that of Mr. Reilly with regard to the National Labor Relations Board.³⁶ But, as has been said, the problem of what the Act really provides and of its practical effect in this regard, if any, depends upon the past practice of judges in reading administrative records and "is such a subtle one that it is practically impossible to appraise the significance of these statutory provisions in the abstract."³⁷

More important, perhaps, than the controversial questions just reviewed are the Administrative Procedure Act's provisions for informal adjustment of proceedings,³⁸ for participation of interested parties in informal rule-making,³⁹ and for public information as to agency organization and processes.⁴⁰ Administrative agencies are, after all, set up primarily to get public business done fairly and efficiently, without controversy. That is the way they function in all but a small portion of their business. If lawyers and the interested public can find out how to take up a matter with an agency and get it disposed of satisfactorily, they need be correspondingly little concerned with the mechanism for adversary proceedings. Study of the works here reviewed and of other literature, which necessarily are directed largely to the more controversial matters,⁴¹ should not be permitted to obscure this truth. A sampling of the descriptive matter published by the agencies in the 1946 Supplement to the Code of Federal Regulations, in response to

35. Symposium, 591-598.

36. *Id.* at 485-489.

37. Nathanson, "The Administrative Procedure Act—Some Comments" 41 *Ill. L. Rev.* 368, 417 (1946).

38. Section 5(b).

39. See n.8 *supra*.

40. See n.7 *supra*.

41. The reflections of earlier controversy, as well as much information about the Act, emerge in the contributions of Messrs. Vanderbilt, McFarland, and Blatchly to the New York University volume. These are interesting and cast light upon some of the practical issues that remain; but their significance, one hopes, will diminish as time goes on.

the requirement of Section 3 of the Act, will emphasize the extent to which informal dealings may be conducted with the Government that centers in Washington.

RALPH F. FUCHS*

A NATIONAL POLICY FOR THE OIL INDUSTRY. By Eugene V. Rostow.¹ New Haven: Yale University Press. 1948. Pp. xvi, 173. \$2.50.

One of the large modern buildings in Washington, D. C. is the Standard Oil Building, located part way between the Capitol and the White House. If it does not house a formal branch of the Government, from it has nevertheless emanated a powerful influence on our national affairs, foreign and domestic.² Professor Rostow's book, however, is not so broad as its title would indicate. "A National Policy for the Oil Industry" is concerned with the organization of the industry, the economic effects of that organization, and the cure for the economic ills resulting therefrom. Basically, it is an amply documented indictment for violation of the antitrust laws of the major oil companies, the oil-producing states, and the Department of the Interior.

Professor Rostow's Brandeisian premise is that it is "easier to achieve the values of democracy in a society where economic power and social prestige are more widely distributed, and less concentrated, than in the United States today."³ It follows that if the oil industry could be made to fit a more competitive pattern of organization, without loss of the economic and social values that its present structure affords, action should be taken to adapt the in-

* Professor of Law, Indiana University School of Law. Member of U.S. Attorney General's Committee on Administrative Procedure, 1938-41.

1. Professor of Law, Member of the Graduate Faculty of Economics, Yale University.
2. See, e.g., Tarbell, "History of the Standard Oil Company" (1904); Nevins, "John D. Rockefeller: The Heroic Age of American Enterprise" (1940); Feis, "Petroleum and American Foreign Policy" (1944); Feis, "Seen From E.A." 93-192 (1947); Schuman, "International Politics" 280-81 (2d ed. 1937); New York Post, Feb. 27, 1948, p. 6; Hearings before H. R. Committee on Judiciary on Charges against the Attorney-General, 67th Cong., 2d Sess. (1922); Hearings before Senate Committee Investigating the Attorney-General, 68th Cong., 1st Sess. (1923).
3. Rostow, "A National Policy for the Oil Industry" xiii (1948).