Book Review. Schwartz, B., French Administrative Law and the Common-Law World

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of construction, "Lawyers worthy of their hire will not leave the matter open to adjudication by the application of rules of construction." (p. 26). Even he, however, occasionally seems to forget that rules of construction are at best crutches and that anyone who pauses to consider would ordinarily prefer not to rely upon them; he says at one place, "If the scrivener desires to avoid reliance upon judicial inferences as to the conveyor's intent, the inclusion of adopted children can be assured by phrasing the gift 'to the children of B, adopted or natural born.' " (p. 125).

The didactic tone of the two sentences just quoted is a characteristic of style which pervades the whole treatise and may be an irritant for readers other than those whose admiration of the author and his notable achievements predispose them to overlook his idiosyncrasies. Other reviewers have commended the readability of his treatise as contrasted with the dry, stilted, and "frequently abstruse" manner of the Restatement. So much may readily be granted; Powell's style is simple and direct enough to be readily understood, but little more can be said in its praise. It is more than a little monotonous, virtually void of the literary artistry which distinguishes a few—very few, indeed—products of legal scholarship. Professor Powell does not often resort to figurative or imaginative language, and when he does he is not always fortunate, as he was not in describing a much-debated portion of the Restatement as "a true photograph of the net distillation of the American law on the topic." (p. 479).

William F. Fritz*

French Administrative Law and the Common-Law World.

In this ably-written book Professor Schwartz makes a contribution of major significance to the literature of both administrative law and comparative law. The study upon which it is based consisted of an examination of French decisions and literature relating to administrative tribunals, together with first-hand observation and investigation during a period of residence in France. To this study the author brought the knowledge acquired in previous studies of English and American administrative law. The results of all of these inquiries are here welded together in a product which employs the comparative method throughout, setting forth the parallel treatment of similar problems in the three countries and bringing an informed judgment to bear upon their solution. It is to be hoped that a similar method, which enriches the understanding of common legal problems by continuously adducing the experience of different legal systems, will be adopted by an increasing number of comparative law writers.

The book's treatment of its subject proceeds by discussion of each of the problems considered from the standpoint of a "common lawyer" trained in the Anglo-American system, who draws on what he knows

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1 SCHWARTZ, AMERICAN ADMINISTRATIVE LAW (1950).
2 SCHWARTZ, LAW AND THE EXECUTIVE IN BRITAIN (1949).
and believes about judicial review of administrative determinations in
his consideration of French "droit administratif" and, in turn, derives
lessons for his own system from what he learns. The author makes nu-
merous references to English and American decisions and authorities
and gives a full account of the French administrative court structure and
of the principles that govern its review of the acts of administrative
officials. Both have undergone a continuing historical evolution, which is
traced.

French administrative law involves primarily the judicial section of
the Council of State, which has been the final reviewing tribunal in sub-
stantially all administrative cases and the court of first instance in most.
Although the Council has also an administrative section, consultative to
the government, great pains are taken to secure separation of the judicial
proceedings and personnel from the advisory and from the officials whose
acts are subject to review. The judicial section, in other words, is a fully
judicial body, whose members enjoy life tenure by long-established prac-
tice and are subject to a system of promotions based strictly on seniority.
Its placement in the executive branch of the government is without prac-
tical significance. The freedom of the Council from political influence is
greater than that of the ordinary courts, where promotions are thought
to be affected at times by political favor.

The judicial jurisdiction of the Council has consisted of proceedings
to annul allegedly illegal administrative acts and of proceedings for
damages on account of injury allegedly caused by such acts. The proce-
dure is inquisitorial, not requiring the services of a lawyer in proceedings
to annul, and has been availed of to such an extent that the volume of
cases has been staggering and the delays in reaching decisions have long
posed a problem which has just been attacked legislatively. In conse-
quence of the development of case law by the Council, the tort liability
of the French state has become far greater than in Great Britain or the
United States, reaching to liability without fault in a considerable range
of situations. Personal liability in the ordinary courts of officials guilty
of personal abuse has also existed, and this has become enforceable by the
government where it has responded in damages. Nevertheless, situations
continue to occur in which uncertainty as to jurisdiction under a dual
court system plagues the litigant and may subject him to many years of
delay in securing recovery.

Professor Schwartz’s main concern is with that "rule of law" which
has been attributed to the Anglo-American system by Dicey and other
writers because of the availability of proceedings to challenge adminis-
trative action in the ordinary courts, and was once thought to be lacking
in the French system because resort lay only to a tribunal in the executive
branch. The author confesses to having shared this view before undertak-
ing the study which produced this book and to having abandoned it be-
cause of what he found. His present conclusion is based not only upon the

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3 At the time Professor Schwartz wrote, late in 1953, a "decree law," designed to re-
duce the case load of the Council by transferring much of its original jurisdiction to
prefectural tribunals, appeared certain to go into effect. A regulation implementing
the reform was issued subsequently on November 28, 1953: Journal officiel, 29 Nov.
genuine independence of the Council of State in reaching its decisions but
upon the relative completeness of the relief obtainable there. In this con-
nection proceedings to annul administrative actions are most significant,
and the author examines in detail the doctrines that have arisen to render
them so effective.

The decisions of the Council of State which have rendered proceedings
to annul so effective have reference to issues which we know as ripeness
of administrative determinations for review, standing of parties to bring
review proceedings, provision for interim relief pending review, and
scope of review. Professor Schwartz finds the French law to be strikingly
like Anglo-American law in numerous respects and, where they differ,
to be usually superior. As is true with us, judicial authority to set aside
administrative acts derives from the basic theory that ultra vires acts
should not be sanctioned. This principle has been expanded to embrace
annulment on account of illegality of all sorts. Insistence by the Council
upon the observance by administrative authorities of procedural require-
ments, grounded upon general conceptions rather than specific statutory
provisions, is a recent development which, like the enforcement of due
process in this country and "natural justice" in Great Britain, has wide
ramifications. The Council has also shown a tendency to review, of late,
not only determinations of "jurisdictional" fact and mixed questions of
law and fact, but even pure questions of fact, thus extending its review
beyond the limits generally observed in this country. The author ques-
tions the soundness of this development.

Professor Schwartz's conclusions as to the effectiveness of the "rule of
law" in curbing administrative excesses in French administrative law are
not new in this country. Twenty years ago James W. Garner surveyed the
work of the Council of State in much the same terms as does Schwartz,
although more briefly and without continuous reference to comparative-
law factors. He arrived at essentially the same conclusions.4 There is no
good reason, consequently, why the errors of insular Anglo-American
opinions adverse to "droit administratif" should have been perpetuated
until now. Professor Schwartz's book is, nevertheless, a significant ad-
dition to the literature that sets matters in their true light, and it should be
influential.

The author is somewhat given to the use of broad concepts, some of
which reflect an attitude inconsistent with the careful judgments that
dominate his book. The English Committee on Ministers' Powers is quoted
with apparent approval to the effect that administrative decisions, as dis-
tinguished from judicial, "are left entirely to [the] discretion" of admin-
istrative authority, without the duty of collating evidence or weighing ar-
guments.5 Wisdom is found at another point in a statement by Jéze that

4 Garner, French Administrative Law, 33 Yale L.J. 597 (1934); reprinted, IV
Selected Essays on Constitutional Law 136. The absence of citations to Garner's
article in Professor Schwartz's book is a regrettable omission. An article in French by
Garner, explanatory of American administrative law and containing comments on the
French law as well, is cited a number of times. See also Riesenfeld, The French Sys-
tem of Administrative Justice: A Model for American Law, 18 B. U. L. Rev. 48 (1938),
and works cited at pp. 49, 54, including other articles by Garner.

5 p. 9.
“every man vested with power tends to abuse it.” Elsewhere litigants opposed to administrative authorities are said to be confronted typically with a “veritable horde of attorneys.” Despite such occasional indulgence in excesses, the principal judgments in the book are discriminating and sound. Independent judicial check upon administrative action is necessary to guard against abuse, and the attributes of such a check which Professor Schwartz regards as desirable are generally needed. Equally valid is his conclusion that a specialized court to review administrative determinations in this country might engender more problems than it solved, because of the danger that it might extend review into the proper sphere of specialized administrative competence.

One additional reservation with regard to this book should be stated. The author has confined himself strictly to legal sources and legal ideas in gathering his material and arriving at his conclusions. One learns nothing of the impact of French administrative law upon governmental efficiency or upon the French economy. Both of these aspects of French institutions are subject to question on the basis of current happenings, and it may be that realistic judgments upon the “droit administratif” should take these factors into account. Perhaps, however, one may draw a favorable inference from the apparent absence in France of demands that the system of administrative justice be changed in any fundamental respects. Be that as it may, so far as this book sheds light on how it works, the system is all to the good.

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6 p. 108.
7 p. 124.
8 pp. 320–323.
9 Professor Schwartz notes that many of the cases coming to the Council of State involve civil servants who seek protection against the actions of superiors affecting them adversely and that the Council has extended protection to numerous alleged World War II collaborationists whom subsequent administrations have sought to dismiss. Due process for government employees has values of which thoughtful Americans are acutely aware these days; but it can also be carried to excess. How the matter stands in France from the standpoint of administration does not appear in this book.

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