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## Book Reviews

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## BOOK REVIEWS

CASES AND MATERIALS ON ADMINISTRATIVE LAW. By Kenneth C. Sears. St. Paul, Minnesota: West Publishing Company. 1938. pp. xvi, 800. \$6.00.

If reminder were needed of the fact that Administrative Law in this country is rapidly coming of age, none could be more persuasive than the appearance within the past two years of three new casebooks in the field. In 1911 the pioneer, Professor Ernst Freund, was obliged to draw heavily on Constitutional Law to fill out the contours of the first Administrative Law casebook. By 1928 the infant had attained an adolescence necessitating radical adjustments in its outfitting, and this need was filled by the second edition of Freund's work. His monopoly of the field was challenged for the first time by the appearance of the behemoth casebook of Professors Frankfurter and Davison in 1932, reappearing in shockingly shrunken proportions in 1935. In the late summer of 1937 Professors Maurer and Stason put their respective entries into the field, and now, a year afterwards, we find still another starter at the barrier.

In 1932 Professor Freund responded to the dedication to him of the work of Professors Frankfurter and Davison with a posthumous review characterizing the plan of the new casebook as breaking "the old tradition completely."<sup>1</sup> The real force of the observation lay in the fact that the reviewer had *almost* (to note Freund's own acknowledgment of the influence upon him of the work of Goodnow) single-handedly been the architect of the old tradition. In its concentration on the separation of powers and related problems the work of Frankfurter and Davison seemed to deny the subject the independent footing Freund had sought to give it, and returned it to the apron strings of the parent Constitutional Law. Freund denied himself the privilege of forecasting which theory ultimately would prevail, but it cannot be doubted that his conviction of the subject's self-sufficiency had not been shaken seriously. Indeed, the authors of the new casebook projected their theory as a somewhat provisional one,<sup>2</sup> and the changes wrought but three years later in their second edition<sup>3</sup> were eloquent acknowledgment of the merit of Freund's mildly-voiced doubts. Vindication of Freund's sponsorship of the independence of the subject is now finally established in the unanimity with which his viewpoint is accepted by the authors of the three latest casebooks in the field.

The prefatory statement tells us that Professor Sears' original intention was the production of a third edition of Freund's work, but that this plan was abandoned in favor of projecting a "new book that must be judged by its own contents."<sup>4</sup>

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1. Freund, Book Review (1932) 46 HARV. L. REV. 167, 170.

2. "Even a casebook must be organized by some concepts and reflect some attempt at systematization, however tentative. But it is idle to pretend that this collection does more than adumbrate the considerations that underlie the creation of administrative bodies, the sphere of their respective activities, the different procedures to which they are subject, the boundaries of their discretion, and the standards which courts invoke in scrutinizing such discretion." FRANKFURTER AND DAVISON, CASES ON ADMINISTRATIVE LAW (1st ed. 1932) viii.

3. The second edition reduced the number of British cases from thirty in the first edition to five in the second; state decisions were likewise reduced from a total of eighteen in the first edition to but three in the second. The second edition's analysis of the subject still savored strongly of the flavor of Constitutional Law, however.

4. SEARS, CASES ON ADMINISTRATIVE LAW (1938) vii.

At the same time the author acknowledges<sup>5</sup> that he has been influenced in the preparation of this new work by two ideas expressed by Freund in the Introduction to his second edition: "Administrative Law continues to be treated as law controlling the administration, and not as law produced by the administration,"<sup>6</sup> and "An effort has been made to relieve the course as far as possible of constitutional problems, which are taken care of in other courses."<sup>7</sup> Both propositions dominate the plan and structure of Professor Sears' book.

The first chapter is devoted to the most elaborate treatment of the so-called extraordinary legal remedies, habeas corpus, prohibition, quo warranto, certiorari, and mandamus, yet presented in casebook form. It is to be doubted if the most generous concession of the importance of these remedies entitles them to such liberality of treatment—in addition to that received incidentally in other connections; as, for example, with habeas corpus in the cases devoted to immigration, and with several of the other remedies in the cases on the removal and control of officers charged with administrative responsibilities. The vastly more important remedy of the injunction in both its aspects (prohibitory or preventive, and mandatory) is entitled to the sixty-odd pages of consideration devoted to it, notwithstanding its independent treatment in courses on equity; and the growing importance of declaratory relief would seem to have a more easily justified demand for relaxation of spatial limitations than such matters as, let us say, prohibition. Most difficult to understand is the omission of the statutory appeal from this chapter on remedies. Granting that some opportunity for discussion of the subject is afforded later in the chapter devoted to representative agencies, the stress laid on the remedial aspects of the subject not merely would justify, but would seem to demand, an independent treatment of the statutory appeal. The remedy needs a place as near the treatment of the injunction as possible in view of the injunction's use as the most frequently appointed method of statutory appeal, and, in the light of the recent decisions of the United States Supreme Court in the cases of *Utah Fuel Co. v. National Bituminous Coal Commission*<sup>8</sup> and *Shields v. Utah Idaho Central R.R. Co.*,<sup>9</sup> for the sake of contrasting the availability of the injunction with that of the appeal allowed by statute. At this point, too, the principle of exhaustion of administrative remedies as a condition of the availability of other remedies has a legitimate claim to specific recognition.<sup>10</sup>

It is in the second chapter that the two ideas ascribed to Freund come most prominently into play. The contents of this chapter (107 pages) embrace the essence

5. *Ibid.*

6. FREUND, CASES ON ADMINISTRATIVE LAW (2d ed. 1923) v.

7. *Ibid.*

8. 59 Sup. Ct. 409 (Jan. 30, 1939).

9. 59 Sup. Ct. 160 (Dec. 5, 1933).

10. The cases on the remedial aspects of the subject are presented in the first section only tentatively. The author expresses the belief (Preface, vii) that the sooner the student is given some understanding of the mechanics by which the cases get into the courts, the better will be his grasp of the substantive aspects of the subject. The question to be raised is whether the student will permit postponement of discussion of the substantive phases of the cases. It would seem to be as difficult to divorce the substantive from the remedial as the converse is difficult, and if the divorcement be not made, much precious time will be lost in repetition. The problem is something akin to that met in trying to teach equity through the medium of the maxims. Professors Maurer and Stason, in their casebooks, have preferred to postpone the discussion of the remedial aspects until after the treatment of the substantive, and this course Professor Sears suggests (Preface, viii) may, if desired, be followed without disadvantage in the use of his book.

of the subject on whatever general substantive side may be conceded to it, as is indicated by the heading: "The General Nature of Administrative Tribunals and Agencies—The Methods by Which They Function and Are Subjected to Judicial Limitation." The treatment is completely non-analytical, no effort being made, even in the table of contents, to skeletonize the subject-matter. Inevitably the result is more or less amorphous. The complete abandonment of the cases dealing with separation of powers will receive acquiescence, and even approval, where the course on Administrative Law comes after the course on Constitutional Law. Too frequently, however, the courses are taught concurrently so that the one cannot wait on the other for a discussion of the subject, and occasionally a student crops up who has not had, and is not even currently exposed to, the course on Constitutional Law. The emphasis lent to the matter by Frankfurter and Davison was far too top-heavy for the ordinary course on Administrative Law, but some consideration of the essential principles, albeit at the expense of repetition, still seems desirable.

Freund's second proposition, that administrative law is less a body of principles produced by administration, and more a system of checks for the control of the administrative process, has been accepted and followed by Professor Sears to an extent that surpasses Freund's own conformity to the proposition. Heavy concentration on the remedial aspects of the subject has necessitated sketchier treatment of other matters. There is no explicit recognition of the familiar distinguishment of the administrative process into quasi-legislative, executive and quasi-judicial functions. This breakdown, which is not merely formal, but substantive in its consequences and implications, serves as the backbone of Maurer's and Stason's analyses of the subject, as, indeed, it seems to be regarded by the courts themselves.<sup>11</sup> While the inclusion of *Commonwealth v. Sisson*,<sup>12</sup> *Southern Ry. Co. v. Virginia*,<sup>13</sup> and *Morgan v. United States*<sup>14</sup> afford convenient points of departure for the establishment of the distinction by the instructor, the paucity of the cases, and the lack of co-ordination among them, makes the burden of elaboration an extremely heavy one. This observation is even more pertinent in respect of the matter of judicial review. Here, more than any other place, analysis is indispensable. The degree of finality that will be accorded the administrative determination will vary not only with the type of subject-matter involved, but also according to the nature of the function, whether quasi-legislative, executive, or quasi-judicial, being exercised by the administrative body. For all his views of the subject as merely a congeries of checks on the administrative process, Freund recognized the necessity for analytical treatment of such matters as notice and hearing, administrative discretion and administrative finality. His analysis of the last mentioned topic, appearing in the 1928 edition of his casebook, was penetrating enough in its initial construction to remain still pertinent today, and its sacrifice without some replacement is to be regretted.

Short shrifted as it seems, the treatment accorded the problem of administrative finality is extravagant compared with that afforded such matters as the licensing and rule making powers, matters hardly to be written off as of little significance at any time, but today looming with a greater importance than ever before. Professor Freund's omission of administrative regulations, and problems connected

11. Compare, for example, *Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294 (1933), with *Pacific States Basket Co. v. White*, 296 U. S. 176 (1935).

12. 189 Mass. 247, 75 N. E. 619 (1905).

13. 290 U. S. 190 (1933).

14. 298 U. S. 469 (1936); 304 U. S. 1 (1938); 304 U. S. 23 (1938).

therewith, was justified at the time of his second edition (1928) on the ground that "the case material is inadequate for . . . proper understanding."<sup>15</sup> Much water has run under the dam since that statement was made, and some attention, however groping and experimental, must be accorded the rule making power and limitations thereon. To some extent Professor Sears recognizes this necessity by devoting an appendix of twenty pages to the Rules and Regulations issued by the Department of Agriculture under the Perishable Agricultural Commodities Act.<sup>16</sup> His choice of this particular administrative activity was a singularly happy one in view of the neat blending of quasi-legislative, executive and quasi-judicial functions to be exercised by the Secretary of Agriculture under the authority of the Act. Cases have been included in another part of the book<sup>17</sup> illustrating the performance of the quasi-judicial function under this Act, and had there been included excerpts from the statute itself, juxtaposed in close conjunction with the regulations, striking illustration might be made of the way in which the so-called interpretive (quasi-legislative) function operates.

Through the strictly functional approach afforded by this instance and others offered in the sections of the third chapter dealing with "Examples of Administrative Tribunals and Agencies in Operation," it may be altogether possible to bring into clear focus the material dealt with in the second chapter. Grants of administrative discretion are illustrated by a section of twenty-two pages devoted to "Health and Morals." Some phases of notice and hearing requirements are exemplified by eighty-two pages of cases dealing with taxation. The section on "Immigration" presents another phase of the subject in some well selected cases (28 pages). Workmen's Compensation is treated in three cases from the Supreme Court of Wisconsin and ten pages of excerpts from law review articles. The section headed "Utilities" is made up of an interesting selection of seven decisions of the Interstate Commerce Commission, excerpts from Sharfman's work on the Commission, two United States Supreme Court decisions, and one case apiece from the highest courts of Wisconsin and Illinois and the old Circuit Court for the Southern District of New York—all dealing with railroad carriers. The Civil Service is accorded treatment in twenty-two pages and the Federal Trade Commission in sixteen.<sup>18</sup> The National Labor Relations Board is recognized through the medium of the *Consolidated Edison* case, as decided in the Second Circuit Court of Appeals,<sup>19</sup> and two other cases, one from the Fifth Circuit and the second from a district court. Cursory comment is offered on the Securities and Exchange Commission, Agriculture, the Communications Commission, the Postal Service and "Miscellaneous Licenses" in a total of seven pages.

A fourth chapter, dealing with the selection, removal and responsibility of officers, and a final chapter devoted to the responsibility of governments, local, state and federal, both conventional in treatment, conclude the book. Especially to be noted

15. FREUND, *CASES ON ADMINISTRATIVE LAW* (2d ed. 1928) vi.

16. 46 STAT. 531 (1930), as amended by 48 STAT. 584 (1934), and 50 STAT. 725 (1937); 7 U. S. C. § 499 (a) *et seq.* (1930). Appendix 4, pp. 769-789.

17. Pp. 524-538.

18. No Supreme Court decisions involving the Federal Trade Commission are included in this section. However, the case of *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298 (1924) is included in Chapter 2 (p. 284), to illustrate (supposedly) the power of the administrative body to acquire evidence necessary as a basis of administrative action.

19. *Consolidated Edison Co. v. National Labor Relations Board*, 95 F. (2d) 390 (C. C. A. 2d, 1938).

is an appendix of thirty pages reproducing the "*Working Papers on Administrative Adjudication*," of Dr. Frederick F. Blachly of the Brookings Institution. Professor Sears has performed a valuable service in making these exceptional materials readily available for the student.

Truly true in every instance, but particularly true in the case of a work so devoted to the functional point of view as is Professor Sears', the principal importance of a casebook is to be found in the cases. The author's analysis of the subject-matter, his plan of presentation, his inclusion of this problem at one point, and his exclusion of that one at another, will challenge criticism as long as casebooks are written. That will indeed be the millennium when a casebook is written against which no quibble can be raised. In this belief a comparison is offered of Professor Sears' casebook with the others in the field. The tabulation that follows, while far from exact, is believed to carry sufficient accuracy to afford reasonably reliable comparisons.<sup>20</sup>

	SEARS	STASON	MAURER	FRANK- FURTER, DAVI- SON, 2d Ed.	FRANK- FURTER, DAVI- SON, 1st Ed.	FREUND 2d Ed.	FREUND 1st Ed.
1. Total Pages	789	745	589	643	1,150	734	667
2. Textual Matter	105	67	49	53	90	14	8
3. Statutory Matter	4	65	9	4	4	20	7
4. Administrative Matter	75	33	10	x	x	x	x
5. British Cases	x	x	x	5	30	29	18
6. Cases from U. S. Sup. Ct.	48	61	81	71	111	60	50
7. Cases from Lower Fed. Cts.	26	15	18	4	12	13	8
8. State Cases	98	57	20	3	18	115	140
9. Total States Represented	30	19	8	3	7	27	26
10. Total Cases	178	133	119	83	171	217	216
11. Total Pages of Cases	605	580	521	586	1,056	700	652
12. Average Case Length	3.4	4.36	4.37	7	6	3.2	3

20. In the tabulation the total pages indicated is exclusive of pages devoted to such matters as indices, bibliographies, etc. Material appearing in footnotes has not been considered in the summarization. What has been referred to as textual matter embraces not merely the author's own statements (set forth in the body, as distinguished from the footnotes), but also quotations from treatises, periodicals, debates, reports, etc. Statutory matter connotes direct quotations from legislative enactments. Administrative matter refers chiefly to rules and regulations. By way of comment on the case materials, decisions from the Court of Appeals for the District of Columbia appear more frequently than do decisions of any federal court other than the United States Supreme Court, yet the degree of incidence is not as high as it might be (a total of 16 cases, of which 6 are reported by Professor Sears) considering the present and rapidly growing importance of that court in the field of administrative law. Among the state courts whose decisions are reported, New York appears most frequently (a total of 98 cases, of which 19 appear in Professor Sears' casebook), with Illinois second (a total of 83 cases, of which 14

It will be noted that there is a heavy preponderance of state cases in the books of Professors Sears and Freund, while those of Professor Maurer and Professors Frankfurter and Davison indicate a strong preference for the decisions of the United States Supreme Court. Professor Stason's casebook is nearly divided between the two. A penchant for the decisions of the English courts is shared only by Professor Freund and Professors Frankfurter and Davison. It may be of interest to note the proportions in which statutory materials are included. Professor Stason, for example, devotes sixty-five pages principally to the Longshoremen's and Harbor Workers' Compensation Act,<sup>21</sup> the Communications Act of 1934,<sup>22</sup> and the Federal Register Act.<sup>23</sup> The limited treatment accorded the legislative materials by Professor Sears accords more or less with the policy of the other authors, except that Professor Freund, whose second edition included twenty pages of excerpts from statutes, recommends in his prefatory statement that in conjunction with the casebook use be made of his *Administrative Powers over Persons and Property*, giving "an entirely different approach to the subject . . . , showing that legislation has been an even more important factor in its development than the decisions of the courts."<sup>24</sup> The textual excerpts consist chiefly of selections from treatises and law reviews except that in the case of Professor Stason's work the text materials are made up almost exclusively of the author's own summarizations, a characteristic also, on a somewhat lesser scale, of Professor Maurer's casebook.

It may not be amiss to add a final remark that the degree of duplication to be found in the casebooks of Professors Sears, Stason and Maurer is slight. Thirteen cases included in Professor Sears' book (that is, cases reported as a part of the text; cases referred to in the footnotes have not been considered) are also to be found in that of Professor Stason,<sup>25</sup> and of these six coincide with the selections of Professor Maurer.<sup>26</sup> The much discussed *Morgan* case,<sup>27</sup> which had not gone

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appear in Professor Sears' casebook), and Massachusetts third (a total of 42 cases, of which 7 appear in Professor Sears' casebook).

21. 44 STAT. 1424; 33 U. S. C. § 901 *et seq.* (1927).

22. 48 STAT. 1064; 47 U. S. C. § 151 *et seq.* (1934).

23. 49 STAT. 500; 44 U. S. C. A. § 301 *et seq.* (Supp. 1935).

24. FREUND, CASES ON ADMINISTRATIVE LAW (2d ed. 1928) vi.

25. Commonwealth v. Sisson, 189 Mass. 247, 75 N. E. 619 (1905); *Farmers' Elevator Co. v. Chi., R. I. & P. R. Co.*, 266 Ill. 567, 107 N. E. 841 (1915); First Nat. Bank v. Board of Com'rs., 264 U. S. 450 (1924); *Humphrey's Ex'r v. United States*, 295 U. S. 602 (1935); *Langenberg v. Decker*, 131 Ind. 471, 31 N. E. 190 (1892); *Lowe v. Conroy*, 120 Wis. 151, 97 N. W. 942 (1904); *Morgan v. United States*, 298 U. S. 468 (1936); *North American Cold Storage Co. v. Chicago*, 211 U. S. 306 (1908); *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287 (1920); *Smith v. Illinois Bell Telephone Co.*, 270 U. S. 587 (1926); *Southern Ry. Co. v. Virginia*, 290 U. S. 190 (1933); *Speed v. Common Council*, 98 Mich. 360, 57 N. W. 406 (1894); *State ex rel. Wisconsin Inspection Bureau v. Whitman*, 196 Wis. 472, 220 N. W. 929 (1928). The cases in italics indicate the cases which also appear in Professor Maurer's casebook.

26. See the italicized cases in footnote 25. The three following cases also appear in the casebooks of Professors Sears and Maurer, but do not appear in that of Professor Stason: *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S. 88 (1913); *Pantages (Pantazes) v. Hays*, 15 F. Supp. 1053 (N. D. Iowa, 1936); *United States v. Abilene & Southern R. Co.*, 265 U. S. 274 (1924).

27. *Morgan v. United States*, 298 U. S. 468 (1936); 304 U. S. 1 (1938); 304 U. S. 23 (1938).

far beyond the decision of the United States Supreme Court in 1936,<sup>28</sup> when the casebooks of Professors Maurer and Stason appeared in 1937, is, naturally, reported only to that extent by them, but the two decisions by the Supreme Court in 1938,<sup>29</sup> as well as the intermediate District Court decision in 1937,<sup>30</sup> have also been included by Professor Sears. On the other hand, while all three casebooks carry the *Ben Avon Borough* case,<sup>31</sup> Professor Sears has chosen not to follow the suit of Professors Maurer and Stason in the reporting of *Crowell v. Benson*<sup>32</sup> and the *St. Joseph Stock Yards Co.* case.<sup>33</sup>

The degree of coincidence in the selections of Professor Sears and Freund is much higher. Forty-two cases appearing in Freund's second edition have been carried over into the casebook of Professor Sears,<sup>34</sup> of which nineteen had previously ap-

28. *Morgan v. United States*, 298 U. S. 468 (1936).

29. *Morgan v. United States*, 304 U. S. 1 (1938), and, on rehearing, 304 U. S. 23 (1938).

30. *Morgan v. United States*, 23 F. Supp. 380 (W. D. Mo., 1937).

31. *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287 (1920).

32. 285 U. S. 22 (1932). The case is discussed in a footnote in Professor Sears' book (at page 311).

33. *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38 (1936). This case is also given footnote discussion by Professor Sears (at page 306).

34. *Amy v. Supervisors*, 11 Wall. 136 (1870); *Attorney General v. Mayor of Northampton*, 143 Mass. 589, 10 N. E. 450 (1887); *Auffmordt v. Hedden*, 137 U. S. 310 (1890); *Ball v. Patridge*, 1 Sid. 296 (1666); *Chew Hoy Quong v. White*, 249 Fed. 869 (C. C. A. 9th, 1918); *Chi. & N. W. Ry. Co. v. R. R. Comm.*, 156 Wis. 47, 145 N. W. 216 (1914); *Earl and Wilson v. Raymond*, 188 Ill. 15, 59 N. E. 19 (1900); *Farmers' Elevator Co. v. Chi., R. I. & P. Ry. Co.*, 266 Ill. 567, 107 N. E. 841 (1915); *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298 (1924); *Fire Dept. of City of N. Y. v. Gilmour*, 149 N. Y. 453, 44 N. E. 177 (1896); *Hagar v. Reclamation District*, 111 U. S. 701 (1884); *Hatfield v. Graham*, 73 W. Va. 759, 81 S. E. 533 (1914); *Ill. Bell Tel. Co. v. Commerce Commission*, 306 Ill. 109, 137 N. E. 449 (1922); *I. C. C. v. Brimson*, 154 U. S. 447 (1895); *I. C. C. v. Louisville & Nashville R. Co.*, 227 U. S. 88 (1913); *Keenan v. Southworth*, 110 Mass. 474 (1872); *Kuntz v. Sumption*, 117 Ind. 1, 19 N. E. 474 (1889); *Langenberg v. Decker*, 131 Ind. 471, 31 N. E. 190 (1892); *Langford v. United States*, 101 U. S. 341 (1879); *Lowe v. Conroy*, 120 Wis. 151, 97 N. W. 942 (1904); *McCord v. High*, 24 Iowa 336 (1868); *Mostyn v. Fabrigas*, Cowp. 161 (1774); *North American Cold Storage Co. v. Chicago*, 211 U. S. 306 (1908); *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287 (1920); *People ex rel. Bailey v. Supervisors*, 12 Barb. (N. Y.) 217 (1851); *People ex rel. Cook v. Board of Police*, 39 N. Y. 506 (1868); *People ex rel. Drake v. Regents of Univ. of Mich.*, 4 Mich. 98 (1856); *Pittsburgh, C., C. & St. L. R. Co. v. Backus*, 154 U. S. 421 (1894); *Rex v. Inhabitants—in Glamorgan-shire*, 1 Ld. Raym. 580 (1700); *Roux v. Commissioner*, 203 Fed. 413 (C. C. A. 9th, 1913); *Smith v. Foster*, 15 F. (2d) 115 (S. D. N. Y. 1926); *Smith v. Ill. Bell Tel. Co.*, 270 U. S. 587 (1925); *State v. Evans*, 3 Ark. 585 (1841); *State of Georgia v. Stanton*, 6 Wall. 50 (1867); *State ex rel. Cothren v. Lean*, 9 Wis. 279 (1859); *Tolman v. Salomon*, 191 Ill. 202, 60 N. E. 809 (1901); *United States v. Abilene & So. Ry. Co.*, 265 U. S. 274 (1913); *United States v. Great Falls Mfg. Co.*, 112 U. S. 645 (1884); *United States ex rel. Tisi v. Tod*, 264 U. S. 131 (1924); *Warne v. Varley*, 6 Term Rep. (Dunford and East) 443 (1795); *Wheeler v. Patterson*, 1 N. H. 88 (1817); *Wilson v. Bowers*, 14 F. (2d) 976 (S. D. N. Y. 1924). The cases italicized indicate cases appearing in the first as well as the second edition of FREUND'S CASES ON ADMINISTRATIVE LAW.

peared in the first edition of Freund's work, thus representing survivals of a test of nearly thirty years of teaching.<sup>35</sup> Several of these latter also appear in the casebooks of Professors Stason and Maurer.<sup>36</sup>

This slight degree of duplication in case materials, and the widely varying analyses and treatments of the subject matter afford the most convincing demonstration of the tremendously broad and rapid development of administrative law in this country. Despite the fact that there are now five (and six, if the first edition of Frankfurter and Davison is included) casebooks in the field of selection, there is no overcrowding. Each has made its own particular contribution, all, of course, coming after Freund, and all building on the foundation he laid so well.

FRANCIS C. NASH†

CASES AND OTHER MATERIALS ON JUDICIAL REMEDIES. By Austin W. Scott and Sidney P. Simpson. Cambridge: Published by the Editors. 1938. pp. xi, 1309. \$7.00.

When competent and experienced scholars turn their hands to casebook editing, the product is fairly sure to be so scholastically and technically impeccable that the only thing left for the reviewer to do is to discuss his own pedagogical preconceptions. That, I believe, is the present situation, or at least I like to think so. As previous experience has shown, the editors can be depended upon for careful workmanship and a collection of cases and other material all fully annotated and documented. The present casebook is no exception. This voluminous work is a mine of trustworthy information on procedural materials, useful no less to the practicing lawyer and judge, as to the student and teacher. It deserves the high place it will undoubtedly assume as a source book of procedural law. So let us turn to the teaching ideas which it supports and illustrates.

It can be demonstrated, I believe, that the general field of civil pleading and procedure is the one field which the Harvard Law School over the years has failed to treat in the grand manner, and that this omission has had profound effects in making our law administration—until recently—technical, particularistic, and backward. True, Ames, as a part of a busy career, turned his attention to pleading and made a sound start in organizing materials in a single and general synthesis, rather than in the disparate segments which still seems to be a usual practice. But the work was not carried on from this substantial, if overhistorical, beginning in such a way as to develop a great master comparable to, say, Thayer in the field of evidence, or to affect profoundly both the future teaching and the case law of the subject. After various vicissitudes the initial procedural work at Harvard came to be a first-year

35. See the italicized cases in footnote 34. Also appearing in Freund's first edition, and reappearing in Professor Sears' casebook is *Commonwealth v. Kinsley*, 133 Mass. 578 (1882). In Freund's second edition the Kinsley case is merely cited by way of a footnote reference (p. 183).

36. *Lowe v. Conroy* and *Ohio Valley Water Co. v. Ben Avon Borough*, both italicized in note 25, *supra*, are to be found in the casebooks of Professors Stason and Maurer. Also to be found in the casebook of Professor Stason (of the cases italicized in footnote 34, *supra*) are *Langenberg v. Decker*; *North American Cold Storage Co. v. Chicago*, and *Smith v. Ill. Bell Tel. Co.* And also to be found in the casebook of Professor Maurer (of the cases in footnote 34, *supra*) are *I. C. C. v. Louisville & Nashville R. Co.*, and *United States v. Abilene & So. Ry. Co.*

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course which it seems fair to characterize as a brief historical survey of the field. This is now to be superseded by, or, as I view it, expanded into, the course subtended by this volume.

The further point that this limited conception of the subject has had a definitely deleterious effect upon law administration in this country is obviously more difficult to establish. We do know, however, how certain subjects such as evidence were profoundly affected by the Harvard teaching, and we do know that civil procedure was long the forgotten subject of both law schools and courts. I mean, of course, that there was assumed to be no general philosophy of the subject deserving of study in school or of application in judicial decision; of technical rulings of vocational instruction there was no end. It almost seemed to be an axiom that the abler the court, the more it frowned upon and slighted procedural issues. Had this resulted in subordinating pleading to be "a handmaid," not "the mistress" of justice, of making it clearly not an end in itself, but only a means, we should all have rejoiced. Unfortunately it actually had just the opposite result. As is well known, procedural history shaped our substantive law, and it seems impossible to get rid of supposed obstacles presented by this history by ignoring them. Moreover, a decision motivated by "fire-side equities" is often rationalized in terms of procedural demands, to the destruction of a sound philosophy of adjective law, whatever may be the result in the particular case. Experience is clear that only by having knowledge and taking thought as to objectives may pleading and procedure be regulated to its proper subordinate position. And this has not been done in the past.

Nevertheless there has now developed a new spirit. The law schools have become increasingly aware of the truism that knowledge means power in the field of law administration as elsewhere, and now the lawyers and the judges are coming to the same view. The crowning proof of this new attitude is the adoption of the new Federal Rules of Civil Procedure and their enthusiastic approval by the bench and bar. Here is now a marvelous opportunity for an adequate national and philosophical, as distinguished from local and vocational, study of this subject. This our authors properly recognize, albeit with an appropriate Bostonian rating of relative importance, for they say that "by a fortunate coincidence, the new curriculum of the Harvard Law School is going into effect at the same time as" the new Federal Rules.<sup>1</sup> Such recognition is to be commended, even if one feels that the pedagogical change it implies has not been extensive.

For after all, this book, valuable as it is as a reference source, seems but an expansion of Professor Scott's earlier casebook presenting an historical survey of the field of Remedies. True, it is stated that the more detailed study of civil procedure is reserved for the third year, and the current Harvard catalogue tentatively announces a year course in "Pleading and Practice" of two hours a week. I do not know what is proposed as the content of this course. Nevertheless, I venture to believe that if it covers much the same ground as this course in Judicial Remedies, it is a duplication of work after an unfortunate emphasis has been given in the first year; while if it covers new ground, it must take up relatively unimportant matters. From any point of view this course as here outlined must take the cream of the subject.

Now, to say that this course approaches the subject in the wrong way because it is at once a running history and a bird's-eye view is not to say that we do not need

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1. May a mere outsider wonder at the apparent tremors with which the new curriculum is viewed at Harvard—witness Simpson. *The New Curriculum of the Harvard Law School* (1938) 51 HARV. L. REV. 965—for it seems to reflect only the natural, non-violent changes made necessary by a changing legal world?

either history or completeness of survey. History is an essential for adequate knowledge of procedure. The difficulty comes when the history of the way we got where we are is made to seem more important than where we are. History should be used to explain the present, not to bring back the past. As it is, we are continually jerked back and forth between the ancient and the modern law, so that it is difficult even for an experienced person, not to speak of a first-year student, to realize where we are or what century we are in at a given point. Thus, after we are given a realistic approach to modern law by the full record in an important case—the famous *Palsgraf v. Long Island Railroad Co.*<sup>2</sup>—we find ourselves flung in the midst of the common law actions, and that, too, as though they were modern problems. Here, indeed, is the statement of one problem (p. 96): “Suppose defendant wrongfully distrains plaintiff’s horse and refuses to return it after gage and pledge. Will trespass lie?” And *The Six Carpenters Case*,<sup>3</sup> decided in 1611, is indicated as giving the final answer.

Perhaps some of this switching back and forth between centuries is necessary, but the matter becomes acute when the central point about which modern procedural reform must turn—the union of law and equity—is postponed to some sixty-five pages near the close of this 1300-page book (pp. 1145-1210). (The *history* and the *survey* of equity occupy the space from 693 to 1144.) To understand what the modern pleading is, what has happened to the abolition of the forms of action, and the substitution of one form of civil action, a study of this material, thus so summarily treated, is absolutely essential. True, the problem is hinted at in various places earlier, beginning perhaps at pages 146-167 on the abolition of the forms of action, though this material is determinedly limited to non-equity cases. In like fashion the right to trial by jury appears at page 311, and trial without a jury and waiver at page 479, but with pains to exclude the vitally important subject, without which the problem cannot be understood, of trial of equitable issues (since the latter was to be treated briefly and more or less by inference at pages 1192-1210). Instances showing this kaleidoscope occur continuously. Of course, it follows from the plan which is to treat the subject by pictures, and not as one deserving of a philosophy which must be erected by diligent study before details become important. But query?

The character of the book as a survey emphasizes this method. Thus, we meet the recent reform of the summary judgment (pp. 226-230) before we have had the background of the long struggle for pleading reform in England and America and the significance in that struggle of the code reform of pleading. Along in the middle of the book we have a long section, considerably longer than that on the union of law and equity, on extraordinary legal remedies, including “common law certiorari,” prohibition, and habeas corpus (pp. 610-692). Even more substance is given to this arrangement by the relative importance, referred to above, accorded to ancient equity as compared to the modern fused procedure. The result, it is submitted, is to give a definitely wrong emphasis to the whole subject, and a wrong background from which to face the procedural problems of today. But vested interests in “equity” teaching certainly yield slowly.

Though a philosophy is not explicit in this approach, perhaps one is implicit after all. May not the fundamental question which the proposed course seems to me to present be bottomed upon a lack of sympathy for the most important of modern procedural reforms and a feeling that maybe Lord Coke in *The Six Carpenters Case* and the Lord Chancellors in the cases from 1393 on (pp. 749 *et seq.*) did have rather the better of the moderns? Unless there is complete accord with the thoroughgoing

2. 248 N. Y. 329, 162 N. E. 99 (1928).

3. 8 Co. 146b (1611).

reform achieved by the new Federal Rules, it is not likely that a course integrated about them, using history to explain, but not control, them, will result. I had better confess at once that my real concern is here. I should not like to see the development of a truly national uniform system of simple law administration hampered by the lagging steps of brilliant young men from Harvard who have been trained to believe that after all the past is best.<sup>4</sup> And I believe no course in pleading and procedure is now worthy of the name unless it does teach that national system—which the new Federal Rules offer—and in a grand way as having a philosophy and a methodology of its own right comparable to any course in the school.

Perhaps these remarks are unduly querulous. After all, however, they are a tribute to Harvard and to the authors, for they recognize the influence which a new procedural course at Harvard will have on courts and schools. Of course, that does not change the fact that the book itself has all the material any instructor needs, so that he can, if he wishes, remould it so as to fashion a course in modern procedure.

CHARLES E. CLARK†

RESTATEMENT OF THE LAW OF TORTS (Vol. 3). By the American Law Institute. St. Paul: American Law Institute Publishers. 1938. pp. xxvi, 759. \$6.00.

In 1913, at the request of the Carnegie Foundation for the Advancement of Teaching, Dr. Josef Redlich, Professor of Law in the University of Vienna, made a careful evaluation of the case method of study in American law schools. While in general reporting favorably upon the value of the method Dr. Redlich made two suggestions for its improvement. To quote from his report:

"It is characteristic of the case method that where it has thoroughly established itself legal education has assumed the form of instruction almost exclusively through analysis of separate cases. The result of this is that the students never obtain a general picture of the law as a whole, not even a picture which includes only its main features. This is, in my opinion, however, just as important for the study of Anglo-American law as for the codified continental systems, and is a task which should also be accomplished by the law courses in the universities. To this end, the following seems to me above all things requisite:

"First, as an introduction to the entire curriculum, care should be taken to introduce to the students, in elementary fashion, the fundamental concepts and legal ideas that are common to all divisions of the common law. . . . The more rigorously casuistic the case method of instruction which then follows necessarily has to be,

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4. On page 1159 there is a suggestion, with reference to the Federal Rules, that "the unification contemplated by these rules and by the statute under which they were promulgated thus appears to be procedural unification only, and so rather of the English than of the New York type." I do not fully understand this, except that I am sure it must be erroneous in its implications, at least. If it is that certain code reform, such as that of New York, made substantive changes in the law of equity, that was never intended and was not so in result. If, however, it is meant that the reform of the new rules is not so complete as that of New York, that, too, is erroneous, as, indeed, the decisions are already beginning to show. I have discussed this matter often and at length, e.g., (1936) 22 A. B. A. J. 447, 449; (1938) 23 WASH. U. L. Q. 297; (1938) 86 PITTSBURGH LEO. J. 4, 28-31; (1939) 15 TENN. L. REV. 551; and the Proceedings at the A. B. A. Institutes in 1938, Vol. I. p. 194, II, p. 236.

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the more important it seems to me it is to make clear to the students at the very beginning certain fundamental facts and guide-posts of the law which are removed from all casuistry and theoretical controversy. . . . It seems to me very advisable to add also at the end of the course lectures which shall furnish the American law student once more, before he steps out directly into practical legal life, a certain general summing up and survey of the law. . . ."

In spite of Dr. Redlich's emphatic language, apparently nothing has been done by the Carnegie Foundation for the Advancement of Teaching towards carrying out either of Dr. Redlich's suggestions. Since 1923, however, the Carnegie Corporation has been sponsoring and supporting the production and publication of text books of a new kind under the general heading of the Restatement of the Law. Thus far thirteen volumes have appeared, the latest one being Volume 3 of Torts, which, like the other twelve volumes, has been creditably done within the purpose and scope of the general enterprise. For although lacking the authority of either a statute or judicial decision; though without the readableness or humanness of a well written statute, decision or text of the common or garden variety; though giving no inkling as to whether the rules laid down are well settled or merely the weight of authority, or as to the exact process by which the various rules have been arrived at; though doing very little toward correlating the various legal fields with each other; in spite of all these handicaps the Restatement is valuable in furnishing to the reader—quoting the Introduction, "the product of expert opinion and the expression of the law by the legal profession".

Volume 3 of the Torts Restatement covers the subjects of Absolute Liability, Deceit, Defamation, Disparagement (slander of title and trade libel), Unjustifiable Litigation (malicious prosecution, wrongful institution of civil proceedings, abuse of process), Interference in Domestic Relations and that part of Interference with Business Relations which relates to trade practices. The subject of liability for damage caused by non-defamatory statements, which is closely related to both deceit and defamation, is apparently to be covered in a later volume. The only reference to it is at the beginning of the division on Defamation.

Statements in the division on Deceit as to the liability for damage caused by negligent representations and by representations of intention and of law accord with what text writers and law teachers have usually contended was the better view; but it would be of special value in these three sections to be furnished with a discussion of the decisions upon which the statements were based. It is only partly reassuring to be told in the Introduction that "the sections of the Restatement express the result of a careful analysis of the subject and a thorough examination and discussion of pertinent cases".

In § 569 in the division on Defamation the meaning of the phrase "actionable *per se*" is explained, but there is apparently no explanation of the phrases which are so likely to be confused with it, "libellous *per se*" and "slandorous *per se*", though there is in § 563, an explanation of the related terms "colloquium" and "innuendo". From the standpoint of the law student this omission seems unfortunate.

Now that the Restatement undertaking is well on its way the present writer hopes that either the American Law Institute or the Carnegie Corporation will soon see fit to do something toward the very important task of carrying out the two pertinent suggestions made a quarter of a century ago by Dr. Redlich.

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THE LAW OF TREATIES; BRITISH PRACTICE AND OPINIONS. By Arnold D. McNair. New York: Columbia University Press. 1938. pp. xxix, 578. \$7.50.

For many decades Moore's *Digest* has been the classic assembly and classification of data concerning international law doctrine as applied to specific cases, in many respects showing how custom has solidified into law. It did much to lift that doctrine from the pages of publicists and to demonstrate its practicality. But its scope was limited in great measure to such occasions as were reflected in the papers and documents of the United States.

To remedy this limitation, a proposal was circulated some years since, urging distinguished legalists in various countries to attempt to do in their countries what Judge Moore had done in this, in so far as their foreign offices would permit use of documents not already public in addition to those previously in print. The volume which is here reviewed is the first fruit of this proposal and, albeit in a circumscribed field, contributes much clarification to the subject. It deals merely with the attitude of the British toward treaties, but within its scope it is an excellent work worthy of the high reputation of its distinguished author.

Under the four general headings of the conclusion of treaties, their interpretation, their operation, and their termination, there have been assembled in logical sequences, data from British command papers, parliamentary records, foreign officer records, and law officer reports, as well as from court decisions. The ramifications are so many and the details so thoroughly brought forward in a spirit of full documentation, that a reviewer is manifestly unable to cover the scope of the entire work. Selection will indicate some examples of its character and significance.

In the United States, ratification of a treaty by the Senate makes it "the supreme law of the land" [e.g., *Missouri v. Holland*, 252 U. S. 416 (1920)], but we find in some instances in Britain, as in the case of the *Parlement Belge*,<sup>1</sup> that subsequent legislation is necessary before existing law is changed, that the treaty alone cannot do it. The reason of course may be that in America a treaty takes effect only by ratification by elected officials, and in England (if Dr. McNair be right) a treaty or agreement may be effective even without ratification, providing it does not cede territory.

In the United States, the "law" thus established by a treaty may be altered by later legislation [*ex parte Larrucea*, 249 Fed. 981 (S. D. Cal. 1917)]; in Great Britain, however, there is an inclination to feel that an established treaty is "the governing factor" until it expires, and that a later treaty cannot alter it (McNair, p. 118) as it could in the United States of course.

The discussion of article 18 of the Covenant of the League is particularly interesting. It provides for registration of certain kinds of treaties with the League and implies they cannot be effective until so registered. Its purpose of course was publicity. (McNair, pp. 154 ff.) But a treaty is concluded to be effective as of date of signing, as of date of ratification, or as of some future date, and the effective date comes and goes before the treaty has been "registered" in Geneva. "It is difficult," says the author, "to escape the view that non-registration is a fatal defect and affects the essential validity of the treaty." England returned Weihaiwei to China when ratifications were exchanged October 1, 1930, although the Convention was not registered until February 6, 1931. When Professor Hyde cites this and other cases similar, Dr. McNair replies: "It is not impossible that contracting parties should provisionally agree among themselves to act as if a treaty signed by them were in force."

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1. L. R. 4 P. & D. 129 (1879).

In spite of the fact that the publishers have circulated with this volume a very deprecatory "flyer" dealing mainly with the limitations of the book, we feel inclined to approve it as a useful compilation of evidence and a convenient bit for occasional casual browsing. Of course, the data here represented does lean very heavily upon the opinions of the law officers given in past ages, not necessarily the same as future opinions will be on which British officials will act. Yet that is little in the way of a deficiency. Even court opinions have been reversed and legislation has been changed. Indeed, the present reviewer is more inclined to count on the essential conservative habits of English officers and therefore on the final value of this volume, than the publishers themselves. Were he not so inclined, he would not have had its title printed on a page above a reference to John Bassett Moore's work.

ELBRIDGE COLBY†

EQUALITY AND THE LAW. By Louis A. Warsoff. New York: Liveright Publishing Corporation. 1938. pp. x, 324. \$3.00.

Mr. Warsoff proceeds, in this somewhat prosaic book, on the assumption that natural equality lies at the root of our Constitution. It is his contention, for this reader painfully arrived at, that the doctrine of equality has been prostituted unduly to protect property rights. The wonder is, not that this has taken place, but that the use of "due process", in the form of "freedom of contract" to protect property, has met such successful resistance.

Mr. Warsoff's book is divided into two parts. Most of the first part is a consideration of the history of the Fourteenth Amendment; and the second part is given over to an attempt at discovering and assessing the application of the "equal protection" clause.

Mr. Warsoff is fairly conversant with most of the literature on the Fourteenth Amendment. And, on the whole, the early part of his book is a fair recital of its paternity. It is one, however, that can be found in any really good text on American History. I find myself, therefore, unable to find any good reason for such patient devotion to a field, already so well traversed. Nothing new, startling or brilliant rescues some 100 pages from this doubt. Accuracy is hardly served by the amateur dramatics of such statement as: "the shot that killed Abraham Lincoln gave birth to the Fourteenth Amendment" (p. 50). After the Introduction to Kendrick's "Journal",<sup>1</sup> there is scarcely longer any need for pen-portraits, somewhat in the Bower's manner, of the Reconstruction leaders. Evidence is not wanting that, among other reasons for the drafting of the Fourteenth Amendment, were the doubts concerning the constitutionality of the Civil Rights Bill.

The thesis of the last half of the book is the charge that the Supreme Court has failed to give precise definition to the term equality. This failure, it is alleged, results from a "conscious refusal" on the part of the Court (p. 158). The charge does not seem susceptible of proof. And even if it were, it is difficult to discern, nor is Mr. Warsoff helpful here, how, in an expanding industrial society, definite shape and contour can be given to so universal a term. Certainly neither historians nor philosophers have rescued it from vagueness.

Mr. Warsoff seems perfectly at home in his discussion of court cases. Yet he can

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1. KENDRICK, JOURNAL OF THE JOINT COMMITTEE OF FIFTEEN ON RECONSTRUCTION.

write that the *Slaughter House Cases*<sup>2</sup> "have become something practitioners cite but do not read." (p. 15). Why they should cite them at all escapes me. But it simply is not accurate to say that, in these cases, that "violation of due process was little argued before the Court" (p. 191). A recent historian, for instance, has written of Mr. ex-Justice Campbell, who first argued the cases, that he "first discovered the possibilities lurking within the due process clause".<sup>3</sup> In fact if Mr. Warsoff's contention that "business interests . . . confined their attacks . . . to bombardment of the *Slaughter House Cases*," (p. 200) holds any meaning, it is because the positions of Campbell and Field and Brody made it possible.

Mr. Warsoff hurriedly crowds into the last part of his book an analysis of cases under the heading *Laissez-faire*; and he manages in a chapter entitled *The Last Four Years*, to write brief notes on more recent cases. Here again, I think, he fails sufficiently to make clear that two doctrines were vigorously quarreling "freedom of contract" and "police power." The *temporary* victory of the first is not altogether to be divorced from nineteenth century philosophy. Even judges do not write in a vacuum. If this were made more sharply clear, then from much of Mr. Warsoff's criticism of the courts—particularly in respect of social and labor questions; to his preference for Holmeses rather than Pitneys on the bench—I can enter no dissent.

FRANCIS DOWNING†

MR. JUSTICE HOLMES AND THE SUPREME COURT. By Felix Frankfurter. Cambridge: Harvard University Press. 1938. pp. 139. \$1.50.

This compact volume is not only a eulogy of the beloved Justice Holmes and an estimate of the greatness of his opinions, but an inquiry into the nature of the judicial process as seen through his eyes. In the three chapters which compose the book, the former Harvard professor concerns himself with the great jurist's attitude toward the police power, civil rights, and the federal system.

Justice Holmes, as Frankfurter ably shows, is by far the most interesting personality in modern law. The freshness of his creations, the grasp of history and social economics which they evince, the singularity of his vigorous old age have combined to justify conferring that title upon him. His judicial opinions unite the greatest intellection with the least effort. The qualities of clarity and brevity which they exhibit very often stamp them with the label of literature as well as law. Their clever attack, hidden implications, and varied rhythm bring joy to those who seek life in legal codes. Almost all of his opinions are as new, seasonable, and vivid as when they were written.

Few men, however, and certainly not Justice Frankfurter, will maintain that Holmes was the greatest judge on the Supreme Court bench. Marshall and Taney, and others, perhaps, surpass him. Nonetheless, he was probably the most utterly human of the great jurists who have served this country.

It is almost a maxim of our law that Justice Holmes' dissents of yesterday are the laws of today. In recent years his method of judicial limitation, long neglected by the majority of the Court, has been vindicated. As Frankfurter points out, he tolerated legislative limitation on property but not on civil liberty, for he deemed

2. 16 Wall. 36 (1873).

3. HAMILTON, *THE CONSTITUTION RECONSIDERED* (1938) XI. See also the essay "Due Process of Law" *id.* at 166 ff.

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the right of free expression to be fundamental. His consciousness of the problems of the down-and-out naturally affected his opinions as to the validity of legislative measures designed to attain industrial well-being. But he was also willing to sanction experimental legislation of which he did not personally approve, because he was always reluctant to invalidate state statutes. The Supreme Court of Justice Hughes has consistently followed Holmes' doctrine in regard to civil rights, and, since 1936, seems to have adopted his attitude toward social welfare legislation.

It seems fitting and significant that the foremost scholar on recent Supreme Court history, whose profound legal knowledge and whose concept of the law as a vital and dynamic force made him the logical choice to carry on the liberal tradition of Cardozo and Holmes, should be the author of this volume. Justice Frankfurter, like the famed jurist of whom he writes, has a way of saying little and making every word count. In this volume, indeed, he reveals a mind as sharp and social as that of Holmes himself. The only criticism of his work, which this reviewer feels justified in putting forth, is that Frankfurter tends to set Holmes up a bit too highly on the pedestal of tolerance and rationality, rather than to consider him merely as a mortal with liberal leanings.

GEORGE A. WARF†

**LAWYERS AND THE PROMOTION OF JUSTICE.** By Esther Lucille Brown. New York: Russell Sage Foundation. 1938. pp. 302. \$1.00.

This book is one of a series being issued by the Russell Sage Foundation which deals with the status of various professions or quasi-professions in the United States. Previous volumes have been concerned with social work, engineering, nursing and medicine. A statement in the book preceding the title page says among other things: "Publication under the imprint of the Foundation does not imply agreement by the organization or its members with opinions or interpretations of authors. It does imply that care has been taken that the research on which a book is based has been thoroughly done." The present volume which considers lawyers and the administration of justice generally, fairly meets the second implication. It gives every evidence of thoroughness and care in the assembly of materials and data. It covers a wide range of related topics, among them early developments in legal education, number of schools and students, full-time and part-time schools, approved and unapproved schools, curriculum, bar examinations, national associations, number of lawyers, their incomes, weaknesses in the administration of justice, and new trends in the promotion of justice.

The author has gone to authoritative sources for her data, such as publications of the Carnegie Foundation dealing with legal education, reports of the American Bar Association and of the Association of American Law Schools, law review articles and various surveys which have been made of the legal profession.

While one will not agree perhaps with all of her conclusions, her approach to the topics discussed in many of which obviously there is room for varying viewpoints, is a fair and judicial one. Moreover, for one who is not trained in the law she displays remarkable ability to grasp and appraise accurately the facts and data bearing on the professional problems considered.

The book is well written. It can be read with profit by law teachers, bar examiners, members of committees on character, and lawyers generally who are interested

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in legal education as well as in the improvement of our professional standards and out look. At the same time it will serve as a convenient source of ready reference to much scattered but important material bearing on education and training for the profession of law.

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