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BOOK REVIEWS

ADMINISTRATIVE LAW—A Text. By Reginald Parker. Indianapolis: The Bobbs-Merrill Company, Inc., 1952. Pp. 343. \$5.50.

Purportedly the first concise treatise on the subject, and one which is intended to embody a public-law philosophy, this work fairly well achieves its purpose of being a guide to practicing lawyers and an aid to students. The organization is convenient enough for both reference and study. Comparatively, at least, it is not over-burdened with argumentative discussion wearying to the reader. The citation of authority and secondary materials is discriminating as well as thorough. Students should hope that another class of potential readers, their teachers, will be enlightened (as the author kindly puts it), and possibly may even be inspired by its un-legalistic brevity and frequent realism.

However, there is a question of whether Mr. Parker can expect to number many legal scholars among those who gain—and retain—understanding from his work. Intentionally or not, his book shows for the half-truth it is the tradition, not only of law and government but also of higher learning, that our government is one of law and not of men. The ideal of administration according to law may or may not be his: a prefatory remark as to one functioning “only through” law, and the tenor of the book, indicate that it is. Nevertheless, the definitions, discussions and criticisms demonstrate actually how far we are from realizing that goal through a body of administrative law.

His definition of administrative law as that governing the functions of executive administrative agencies is inadequate and tautological. It leaves unknown or open to individual notions the meaning of all the terms involved. This is given an undue importance by his attempted rationalization of what one would have thought to be simply a matter of convenience and space in expressly limiting the scope of the book to general administrative law. To do so, a distinction is drawn between general and special administrative law and between substantive and procedural law. The meaning of one depends on the other, and both are vague: most substantive administrative law is special, *i.e.*, pertains to a particular agency, while the general law common to all “or most” agencies is “chiefly but not exclusively procedural.” True it may be; understandable for a concise work; but satisfactory it is not. Apparently deriving his thought and terminology from the Kelsen school of functions and norms, Parker explicitly warns that he does not support Savigny’s historical school in the idea of “ripeness” for codifying law. This, in connection with a well-reasoned critical evaluation of the Administrative

Procedure Act which concludes that the statute neither codifies nor much improves pre-existing law, implicitly recognizes the present lack of law.

There are statutes, including the overrated Administrative Procedure Act, regulations, interpretations, and cases. There is custom, which may have almost the effect or force of law, but which Parker seems to deem less important than might be expected from his excellent short review of its historical background and concepts. But there is not much certain general administrative law. A study of this entire work, and comparison with a small part of the mass of disputatious literature in the field, suggest another definition of administrative law: the judicial endeavor to subject the men administering the power and laws of government to the laws of governing.

At least the proffered definition reveals the fundamental antinomy which is ambiguously expressed in the old maxim, "the King does no wrong." Maybe Parker, in common with others in his specialty, is too close to perceive the difference between the government and the governors, between government and governing. Perhaps he has seen it, but does not accept or cannot apply the idea in his thinking. To the extent that his own definition of the subject would exclude judicial activities, while a chapter on constitutional fundamentals and three parts on judicial remedies are concerned with the law of the courts, he either is being inconsistent or is overlooking that the *raison d'être* for the subject as a specialty was in the new prominence of the age-old perplexity, "Who watches over the guards?" In America it has come to be the judiciary in the guise of constitutional interpreters. Yet, whatever the reason, in this book there is on one hand an attitude, impatient or sometimes petulant, of rivalry with the "constitutionalists" for an accepted proprietary interest in and dominion over the subject-matter. On the other hand, there is a tendency to try to minimize or to exclude constitutional law as an important or a proper part of administrative law *per se*, even though the constitutional issues and standards are recognized as basic and are raised throughout.

This equivocal, almost vacillating, approach has considerably lessened the utility and scholarly value of what could have been the best recent text. One result is that the chapters on the constitutional bases of administrative law and on judicial remedies are not much more than an outline of the problems and a summary statement of their present solutions. There are penetrating comments on changes in emphasis and doctrine. Yet, an attorney using those chapters would have little more than a timetable of routes, stations, and hours. And a classical scholar might find it ironic that the legend of the book is, "We live under a constitution that is not copied from the laws of our neighbors. On the contrary, we are a model to other nations rather than their imitators."

Another consequence of the weakness in Parker's approach is the effect on his contribution to legal philosophy. Admittedly, a public-law theory, showing the limits upon the individual as well as upon the government,

would seem to be appropriate to an understanding of public administrative law. On the whole, however, the difference from a private-law philosophy appears to lie in a more detailed explanation and classification of general administrative organization and operation as it affects the individual. This forms the central and most detailed portion of the book. As a means of placing an individual's rights in a perspective of government in action, it is commendable and highly desirable both practically and theoretically. Even so a private attorney would usually be professionally concerned primarily with learning and enforcing or protecting an individual client's interests as against those represented and personified by an administrator, and secondarily (as to a means of doing so) in whether the executive branch can function adequately. Mr. Parker can quite correctly reverse that order of priority, without necessarily going so far as to claim that the latter one is the concern of administrative law, and without having thereby developed another legal philosophy.

These strictures, although applicable to this book and its author, should also be pertinent to others who are tilling the same rocky and stump-studded field. Continuing efforts in recent decades by a growing professorial band, and fertilizer spread in the form of a paternally beneficent government, have not yet transformed the scattered seeds of an amorphous grouping of legal principles into a mature corpus of law. Texts, treatises, articles, courses, loose-leaf services, and hornbooks, now culminating in this concise guide, are not sufficient to create a unified body of knowledge. It might be that the crop is not yet ripe; more likely that phrase is an evasion of the difficulty. Most of the writers on administrative law have described, analyzed, classified, and debated. They have not thought profoundly enough, with rare exceptions. An illuminating principle, now obscured by politics, argument, and legal confusion, must be conceived. Mr. Parker has done well to succeed in making the main outlines of administrative law more intelligible to those whose need for comprehension he felt and has partly satisfied.

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SEX AND THE LAW. By Morris Ploscowe. New York: Prentice-Hall Inc., 1951. Pp. 310. \$3.95.

Achieving progress has been one of the primary problems of mankind since time began. We constantly seek advancement: technologically at least, this has been true; insofar as the law is concerned, this has been too painfully and acutely untrue. Whether viewed from the standpoint of modern science or from its oldest psychological factors the law today does not fill modern social needs. This is sharply brought into focus by Judge Ploscowe in his work on *Sex and The Law*. It not only points up the glaring lack of understanding shown in the statutes and in law enforcement