The Federal Administrative Procedure Act and the Administrative Agencies (Book Review)

Edward D. Re
The monographs, by Prof. Simes and Mr. Basye, are scholarly and worth careful reading.

To the Model Probate Code Committee of the American Bar Association, the research staff of the University of Michigan, Prof. Simes, Mr. Basye and all those who collaborated in this work, the public and the legal profession owe their thanks and gratitude for a great public service, painstakingly and cheerfully rendered, and fruitfully concluded.

Warren J. Bloom.*


The Federal Administrative Procedure Act and the Administrative Agencies (with notes and Institute Proceedings) is a volume designed to recapture, and permanently to record the accomplishment of an Institute held by the New York University School of Law, in association with the Division of General Education. This Institute was planned "for the purpose of informing the bar of the profound changes that have been made and are being made in the administrative process of the Federal Government. The Institute was designed to give an opportunity to government personnel, attorneys at law, and the faculties of law schools to hear outstanding experts discuss the Act and describe its application to the more important federal administrative agencies." 1 The book is of great service to those who were not fortunate enough to attend the Institute, but are vitally interested in the Federal Administrative Procedure Act, and its implementation by the federal agencies affected.

Dean Vanderbilt's direct contribution to this volume consists of an enlightening Foreword,2 an interesting treatment of the "Legislative Background of the Federal Administrative Procedure Act,"3 and participation in the discussion periods that followed most of the addresses.

Whether the Federal Administrative Procedure Act is deemed to be the most important statute passed by Congress since the enactment of the Judiciary Act of 1789, or merely another important enactment, it is perfectly true that the Act represents a monumental charter in the field of administrative law.4

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1 P. v (Foreword by Arthur T. Vanderbilt, Dean, New York University School of Law).

2 Pp. iii-v.

3 Pp. 1-50. See Dean Vanderbilt's, One Hundred Years of Administrative Law, I Law, A Century of Progress, 1835-1935, 117-144, for a review of the development of Administrative Law.

4 The Federal "Administrative Procedure Act" Becomes Law, 32 A. B. A. J. 377 (1946); "One of the really important events in the development of administrative law in the United States has been the recent enactment by
Administrative law, although perhaps regarded by lawyers as an illegitimate child from its very birth, today is undoubtedly a much more important field of the law than some of the more conventional topics of law study. It is an ever-expanding body of jurisprudence finding nourishment in present day socio-economic complexities, and the magnitude of governmental functions and benefactive services. With the enactment of the Administrative Procedure Act, administrative law "comes of age in the federal field." 6

The book, handsomely bound in blue fabrikoid with gold lettering, is a compilation of materials written by the leading authorities in the field of administrative law. With the exception of Mr. Frederick Frank Blachly, a teacher of public administration who criticized the Act, and "the way it was foisted upon the people of this country by the American Bar Association," 7 the authors of the articles are lawyers writing on their particular field of specialty, their knowledge not being merely of an academic nature, but the result of experience and practice with the more important administrative agencies. The importance of the task well deserved the services of such a team of experts.

Although the articles are of varying length, each one makes its individual contribution to the reader's understanding of the subject. Many new facets of administrative law will be revealed to the student. The lawyer and the teacher will re-read the Act with a broadened perspective of its scope and implications. Some of the articles attain the dignity of monographs, and as such would be worthy of individual publication. The articles on rule making, adjudication and judicial review offer excellent textual material. The personal note present in many of the articles not only serves to create interest and make the reading palatable and by no means as laborious as the reading of a conventional law text-book, for example, but also helps acquaint the reader with the personalities that played a part in the drafting of the Act, and those that will play a part in effectuating its purpose. The book is not wanting of a note of humor. Every member of the Bench and Bar (and all aspirants to either office) must read Mr. McFarland's first paragraph in response to Mr. Blachly. All with some sense of humor will chuckle at the second paragraph.

The book contains the following twenty articles:

(a) Analysis of the Federal Administrative Procedure Act, by C. McFarland; 8

(b) Critique of the Federal Administrative Procedure Act, by F. F. Blachly; 9

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Congress of the Administrative Procedure Act of 1946—an act designed to prescribe in statutory form certain basic essentials of fairness and equity in the administrative relations between the government and its citizens." STASON, THE LAW OF ADMINISTRATIVE TRIBUNALS 150 (1947).

6 SEAGLE, THE QUEST FOR LAW 330 (1941).
7 P. 30. (It would be interesting to know the opinion of Mr. Blachly regarding the proposed "Administrative Practitioners' Act." On this proposed Act, being supplementary to the Administrative Procedure Act, see Administrative Practitioners Act: Association Offers Bill to Regulate Admissions, 33 A. B. A. J. 307 (1947).)
8 Pp. 16-29.
9 Pp. 30-56.
(c) Response to Mr. Blachly's Critique, by C. McFarland; 10
(d) The Federal Communications Commission, by L. G. Caldwell; 11
(e) Effect of the Administrative Procedure Act upon the Civil Aeronautics Board, by J. H. Wanner; 12
(f) The Federal Administrative Procedure Act and the Bureau of Internal Revenue, by R. H. Dwan; 13
(g) Federal Power Commission Practice and Procedure as affected by the Administrative Procedure Act, by B. Ross; 14
(h) The Federal Administrative Procedure Act and the Post Office Department, by F. J. Delaney; 15
(i) Application of the Administrative Procedure Act to the Statutes administered by the Securities Exchange Commission, by R. S. Foster; 16
(j) The United States Patent Office and the Administrative Procedure Act, by C. W. Ooms; 17
(k) The Federal Administrative Procedure Act and the Immigration and Naturalization Service, by U. Carusi; 18
(l) Impact of the Federal Administrative Procedure Act on the Procedures of the Interstate Commerce Commission, by C. A. Miller; 19
(m) The Administrative Procedure Act in its Application to the Functions of the Department of Agriculture, by W. C. Hunter; 20
(n) The Impact of the Federal Administrative Procedure Act on the Federal Food, Drug, and Cosmetic Act, by M. F. Markel; 21
(o) An Analysis of Federal Trade Commission Procedures as They Relate to the Administrative Procedure Act, by R. E. Freer; 22
(p) Effect of the Administrative Procedure Act on the Regulatory Functions of the Department of Labor, by J. S. Ray; 23
(q) The Labor Board and the Administrative Procedure Act, by G. D. Reilly; 24

10 Pp. 57-63.
13 Pp. 142-160.
15 Pp. 196-206.
16 Pp. 213-250.
17 Pp. 253-270.
18 Pp. 278-300.
20 Pp. 344-378.
21 Pp. 389-413.
22 Pp. 414-432.
(r) Rule Making Under the Administrative Procedure Act, by D. Reich; 25

(s) Adjudication by Federal Agencies Under the Administrative Procedure Act, by A. Seller; 26

(t) The Judicial Review Provisions of the Federal Administrative Procedure Act (Section 10) Background and Effect, by J. Dickinson. 27

The Appendix, 28 consisting of the Act itself, is followed by a detailed index by title and by references to specific sections of the Act.

The book is an ideal companion to Senate Document No. 248 (Administrative Procedure Act—Legislative History, 79th Congress), 29 but carries on beyond the stage treated in Document No. 248. Both volumes are invaluable to practitioners and students alike. Both volumes will play a part in the molding of judicial attitude and administrative policy in the process of construing and applying the Act. However, the more immediate contribution of this book is that it will help its readers to understand the system established by the Act. It is wisdom and truth that Mr. McFarland utters when he states, “But, this statute will not fulfill its full function until the bar has become just as familiar with the field of administrative law as it is with other fields of law. The bar will serve itself as a profession and lawyers will serve themselves individually if they will attempt to learn the subject.” 30

All materials furthering the understanding of the Act are to be welcomed. Various articles have already played a part, 31 however, this volume performs a more comprehensive and a more thorough service.

All who read The Federal Administrative Procedure Act and the Administrative Agencies are assured a better understanding of a congressional enactment aimed to control administrative power by the establishment of effective procedural safeguards, thereby reassuring the citizen that ours is “a government of laws and not of men.”

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22 Pp. 492-510.
26 Pp. 524-534.

29 Administrative Procedure Act—Legislative History, 79th Congress, Senate Document No. 248 (1946) (Presented by Mr. McCarran, Chairman, Committee on the Judiciary, United States Senate).
30 Pp. 28-29.