



ADMINISTRATIVE LAW: CASES AND MATERIALS, by Louis L. Jaffe. Prentice-Hall, Inc., New York, 1953. Pp. xvii, 647. \$10.00.

Reginald Parker

Repository Citation

Reginald Parker, *ADMINISTRATIVE LAW: CASES AND MATERIALS*, by Louis L. Jaffe. Prentice-Hall, Inc., New York, 1953. Pp. xvii, 647. \$10.00., 14 La. L. Rev. (1954)

Available at: <http://digitalcommons.law.lsu.edu/lalrev/vol14/iss3/32>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at DigitalCommons @ LSU Law Center. It has been accepted for inclusion in Louisiana Law Review by an authorized administrator of DigitalCommons @ LSU Law Center. For more information, please contact sarah.buras@law.lsu.edu.

to Mr. Pritchett, it was brought about because a majority of the Court mistakenly converted Chief Justice Stone's conception of judicial restraint into judicial abdication, equated democracy and majority rule, and identified judicial review and limited government with minority rule. The questioning of the democratic character of judicial review combined with frequent open disagreements among the Justices, in Mr. Pritchett's opinion, have weakened the moral prestige of the Court.

Although skeptics may cavil at Mr. Pritchett's statistical compilations of the votes of individual judges, they and all others will find his study of civil liberties as interpreted by the Vinson Court extremely valuable. First, Mr. Pritchett provides a complete survey of civil liberties decisions from the October term of 1946 to the October term of 1953. Second, his account of the personal factors involved in judicial decision provides much information on the mental processes of individual Justices. Fourth, he raises important questions concerning the role of judicial review in a representative government which suggests the necessity of further studies of this American institution. Finally, Mr. Pritchett is not so fettered by his statistics as to avoid reaching his independent conclusions or offering significant criticisms of the work of the Court as a whole and of the Justices individually. Future writers will undoubtedly be more concerned with doctrinal developments, but for a long time Mr. Pritchett's book will remain a useful contribution to the literature of constitutional interpretation generally and of civil liberties in particular during the period in which the Court accommodated itself to the cold war and mass hysteria.

*Robert J. Harris**

ADMINISTRATIVE LAW: CASES AND MATERIALS, by Louis L. Jaffe.
Prentice-Hall, Inc., New York, 1953. Pp. xvii, 647. \$10.00.

A well-written, compact casebook outstanding for two reasons: brevity and recency. The awkwardness of the task of reviewing a casebook has been recently and very aptly demonstrated in what ought to go down as a masterpiece in legal humorous writing.¹ Yet Jaffe's casebook deserves a few remarks

* Professor and Head, Government Department, Louisiana State University.

1. Wiener, *The Teaching of Military Law in a University Law School*, 5 J. LEGAL EDUC. 475, 483-84 (1953).

other than standard comments such as that it is a well-assembled volume and that any lawyer who knows all its cases and materials must be considered as one having a pretty good knowledge of administrative law.

The author deals with *res judicata* in administrative law in a very haphazard way. This is perhaps inevitable in view of the primitiveness and confusion of our law, including of course the Administrative Procedure Act, on this point. Whatever comment Jaffe does present, however, is not apt to enlighten the reader. As a matter of fact, it might confuse the student. Thus, it is quite inapposite to speak under the title "*res judicata*," of a change in policy, be it by a new regulation or by a new precedent as in the *Chenery* case.² Changes in regulation, policies, and even precedents are akin to statutory changes and have really hardly anything to do with the *res judicata* problem, which involves the taking away of rights vested by virtue of a favorable decision. A legislature may amend the statute and a court may no longer follow a precedent; there is no legal civilization in which either one does not happen almost daily. But a court has no right to "reopen" a decision that has become final, and to grant this right to administrative authorities is one of the elementary criteria of the police state.

The discussion of official tort liability especially for misadministration would deserve a more elaborate treatment. Particularly, the learned author in discussing officers' liability ought to have made it clear that under our Federal Tort Claims Act a judgment against the government—evidently including a negative one—operates as a bar to any action against the wrongdoing officer.³

The chapter on the right to hearing and notice contains an excellent part on those apparently increasing situations where no or at any rate no due process hearing is required, because no "right" is involved, such as in cases involving dismissal from civil service, refusals or cancellations of passports, non-admission of an alien despite his valid visa, revocation of parole, and in the future "national emergency," concentration camps for citizens (!) who will "probably" engage in espionage or sabotage.

The author's cases on separation of powers are not as well

2. *SEC v. Chenery Corp.*, 332 U.S. 194 (1947).

3. 62 STAT. 984 (1948), 28 U.S.C.A. § 2676 (1950).

selected as in Gellhorn's recent edition.⁴ This, however, is partly obviated by a valuable, albeit brief, survey of "legislative supervision of administration." In discussing the court-or-board question for industrial accident claims, however, the author thinks that "railway labor resists the enactment of a compensation law," which is partly inaccurate (there are some weighty railway labor voices that favor the enactment of a uniform compensation law for railroad and similarly situated workers) and at any rate not a cogent argument pro or contra. For those who favor court law suits in railway labor accident cases do so largely because of the possibility of obtaining jumbo verdicts in court rather than because of any well-organized opinion on the preferability of boards or courts.

All in all, a very useful book especially for those schools that wish to confine administrative law to two hours per week.⁵

*Reginald Parker**

THE AMERICAN PRESIDENT, by Sidney Hyman. Harper & Brothers, New York, 1954. Pp. 342. \$4.00.

At a time when the air has long been befouled by senseless lamentations over "federal usurpation" and "executive dictatorship" this wise little book injects an element of freshness and sanity into the atmosphere of political discussion. Mr. Hyman's study of the presidency is not an exhaustive historical and legal study of the institution as exemplified by the definitive book of Edward S. Corwin entitled, *The President: Office and Powers* (New York University Press, revised edition, 1948). It is rather a general and readable account of the historical and political development of the presidency which will perhaps provide little new information concerning the office to careful students of American government. To say this is not to disparage the genuine merit of Mr. Hyman's book as a non-technical account of the presidential office rich with insights in American political institutions. Indeed, this book is required reading for all thought-

4. GELLHORN & BYSE, ADMINISTRATIVE LAW: CASES AND COMMENTS (3d ed. 1954).

5. This usefulness is a bit marred by the fact, however, that the Gellhorn-Byse book, which has 1273 pages plus a bibliography of nearly 90 pages, cost merely \$9; whereas the present volume, although it is only about half as big, costs \$10!

* Professor of Law, Willamette University.