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CASES ON ADMINISTRATIVE LAW, by
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1938. Pp. xvi, 800. \$6.00.

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Reviews

CASES ON ADMINISTRATIVE LAW, by Kenneth C. Sears. West Publishing Co., St. Paul, 1938. Pp. xvi, 800. \$6.00.

The subject of Administrative Law seems to be in violent flux at the present time. The problem therefore of reviewing a casebook in this field is almost impossible unless the reviewer gives in advance some concept of the meaning of the term "Administrative Law" which may serve as a background for discussing the particular text.

To the reviewer it seems that Administrative Law includes all of those legal difficulties arising from the actions of public officials, federal, state, and city. The major questions which constantly appear are the nature and source of the power of particular officers, which are usually covered in the so-called doctrine of separation of powers into legislative, executive, judicial and administrative, as set forth in the Federal Constitution, the state constitutions, federal and state statutes, municipal ordinances, executive orders, and similar legislative sources. The course also, it seems, should properly include consideration of the formal nature of the various safeguards thrown around the action of such officials by the constitutions and other legislative sources just mentioned. Prominent among these are the problems, both procedural and substantive, surrounding the action taken by such officials including the form and source of their rules, the requirements of notice and hearings, the nature of orders, and the various types of enforcement, which are found in myriad variations in the functioning of legislative, executive, judicial, quasi-judicial, and quasi-legislative bodies. There necessarily must be a consideration of the ever-present query of the extent to which the actions of these officials or groups may be attacked, delayed or wholly prevented by judicial interference. Here we have the specter of judicial review, which appears in the form of direct or collateral attack and its indirect effects on other interests.

Since administrative law in whatever outline it may be conceived deals primarily with the action of government, it seems fair to say that in America at least there is little common law upon the subject. The power of government officials and the safeguards thrown about their actions, arising, as they do, almost entirely from constitutions and statutes, make this subject peculiarly

a branch, if not an integral part, of constitutional law. The problem of divorcing constitutional from administrative law in light of our present governmental set-up would seem to be far more complicated than the separation of the Siamese twins.

Yet this is what the author has attempted, and it must be said that he has succeeded surprisingly well with the seemingly impossible task which he set for himself.¹ It is almost a truism that any substantive question of law surrounding the actions of government officials soon rises into the rarified atmosphere of constitutional law and statutory interpretation; but this book has been constructed in such a way that the student's attention is almost entirely directed to simpler legal problems of administration and avoids, unfortunately, the more difficult and complicated questions arising from the nature of our government. The first three-sevenths of the material is devoted to the relation between the courts and administrative bodies, covering very carefully and exhaustively the various forms of direct, judicial interference with administrative boards, clearly indicating the difference between direct review and collateral attack. The next two-sevenths of the material offers an excellent comparative treatment of the activity of various administrative bodies, both federal and state. The remainder of the book proper treats of the problems arising primarily in the executive department from civil service, removal and responsibility of administrative officers, and government responsibility for the actions of such officials. This section is much more extended than is usually the case in administrative law texts and is a distinct contribution to the field. The Appendix contains a valuable tentative classification of the activities of Federal agents, with careful arrangement and organization of the activities of these bodies in a manner which should be very enlightening to the beginning student. It is unfortunate from the scholar's point of view that the author failed to cite the statutory sources from which the information was taken.

It is hardly fair to criticize a casebook on the ground that it contains cases. Yet in a field of this type, where most of the source material lies in statutes, administrative rules and decisions of administrative bodies, reliance on cases, even when as well-chosen as these, does not give a complete picture. It seems, therefore, that the work would have been much improved by the inclusion of more of this material. Chapters Four and Five are an

1. P. vii.

outstanding exception to the general case level of the book and offer much of the type of source material suggested. It seems unfortunate that the same plan was not extended to the rest of the text. Some use has been made of cut cases, extracts from speeches and law review materials. A further addition of such material would add much more to the value of this interesting work.

FREDERICK K. BEUTEL*

SELECTED PAPERS OF HOMER CUMMINGS, edited by Carl Brent Swisher. Charles Scribner's Sons, New York, 1939. Pp. xxvi, 316. \$3.50.

A published selection from the papers of the man who was Attorney General of the United States from 1933 to 1939 is indeed an event of great significance. It is hard to conceive of a comparable six years' period in the legal history of the country. The war periods do not furnish an analogy; in effect, war operates as a moratorium on legal problems. After peace is declared, to be sure, there is the necessary piecing together of the broken fragments of legal relations, but the process is apt to be leisurely.

The New Deal, on the contrary, was almost exclusively a legal battle. Its chief problem lay in determining what legislative and judicial obstacles of a legal nature lay in the path of social reforms for which, in many instances, adequate patterns of social control already existed, and for which political power to enact these measures into law was superabundant.

From 1933 to 1937 there was put upon the statute books of the United States legislation whose admitted effect was to strain to the utmost the constitutional powers of the federal government. It is not surprising, then, that the papers of the one who was Attorney General during this period should constitute a "public document" of the first importance.

It would have been natural for the editor to have dedicated the major portion of the volume to the activities of the New Deal as they affected the Justice Department. However, this was not done. In point of fact, only 78 of its more than 300 pages are devoted to that subject. The rest of the book undertakes to give in

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