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CONCERNING ENGLISH  
ADMINISTRATIVE LAW, by Cecil Thomas Carr.  
Columbia University Press, Publishers, New York,  
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Charles S. Hyneman

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cate that Cardozo was not on his side. Long before *Wood v. Fisk*, as the author notes, he had appeared as counsel for the customer in a case decided by the Appellate Division which had dealt the "custom of the street" its most serious blow up to that time.<sup>5</sup> Fortunately today, by federal legislation and the rules of the S.E.C., these practices have been definitely proscribed.

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CONCERNING ENGLISH ADMINISTRATIVE LAW, by Cecil Thomas Carr. Columbia University Press, Publishers, New York, 1941. Pp. ix, 189.

FEDERAL ADMINISTRATIVE PROCEEDINGS, by Walter Gellhorn. The Johns Hopkins Press, Publishers, New York, 1941. Pp. 150.

We have enlarged the area of governmental activity enormously in recent years. We will probably extend it much further in the immediate future. It is important that we constantly, and carefully, consider how we are going to regulate the exercise of power by the men to whom we give it.

Sir Cecil Carr and Mr. Walter Gellhorn are deeply concerned about this problem. Each has had extraordinary opportunity to observe how governmental power is used and how the governed react to it. For twenty years or more Sir Cecil has been principally engaged in drafting measures for enactment by the British Parliament or by British administrative officials. Mr. Gellhorn, Professor of Administrative Law and Legislation in the Columbia University Law School, was in charge of the research staff which collected data for the United States Attorney General's Committee on Administrative Procedure; this Committee's *Final Report*, published in 1941, is by far the most comprehensive and incisive analysis of administrative law-making and law-enforcing procedure that we have made in this country.<sup>1</sup>

Each of these books consists of lectures delivered before American university audiences. They summarize, for their respective countries, the progress which has been made in regulating the exercise of governmental power by administrative offi-

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5. 17 App. Div. 329, 45 N.Y. Supp. 219 (1897).

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1. *Final Report of the Attorney General's Committee on Administrative Procedure*, Sen. Doc. No. 8, 77th Cong., 1st Sess. (1941).

cials; they identify problems which ought to be solved; they analyze conflicting points of view and competing considerations; and they offer personal opinions.

Sir Cecil's lectures were doubtless more pleasant to listen to than those of Mr. Gellhorn. They demanded less consistent attention and less acute thought. They contain much that makes them worth the attention of American listeners and readers. Their chief value may be that they offer evidence showing that traditions of the British Civil Service and scrutiny by Parliament are effective limitations on the exercise of administrative power in a country that gives its judiciary very little control over the other branches of government.

An American lawyer who will read only one of these books will be wise, in my opinion, to choose Mr. Gellhorn's lectures. They deal with just about every phase of the problem of administrative exercise of judicial power that we have been arguing about for twenty-five years. They give a lot of facts not widely known about how federal administrative officials and commissions really act. And, while they do not argue all sides of a question impartially, they throw the light of acute reasoning on a lot of dark spots in our thinking.

Mr. Gellhorn declares some convictions; leads the reader squarely up to several conclusions. Among the more important are: combining the power to prosecute and the power to judge in the same man "practically never exists" in the federal government;<sup>2</sup> where power to judge a case lies in the same department or commission that prosecutes it, there are effective safeguards against abuse;<sup>3</sup> the highly informal ("unjudicialized") procedure of many agencies has proved very satisfactory;<sup>4</sup> where federal administrative tribunals have varied from traditional judicial practice "in developing the process of proof" they have usually been justified in doing so;<sup>5</sup> persons dedicated to a particular interest should be confined to advisory capacities—not charged with administrative authority;<sup>6</sup> "the administrative process has enriched rather than destroyed, expanded rather than contracted the area of democratic action."<sup>7</sup>

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2. P. 20.

3. Pp. 24-39.

4. Pp. 45-74.

5. Lecture III.

6. P. 132.

7. P. 123.

Mr. Gellhorn appears to me to be reluctant rather than eager to commit himself to a conclusion. When he does announce a conviction, he makes abundantly clear why he believes as he does. If any man who doesn't believe in vesting adjudicative power in administrative agencies cannot stand a pretty solid jolt, he had better not read this book.

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