

# Federal Regulatory Action and Control. By Frederick F. Blachley and Miriam E. Oatman

Reynolds C. Seitz

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

---

### Repository Citation

Reynolds C. Seitz, *Federal Regulatory Action and Control*. By Frederick F. Blachley and Miriam E. Oatman, 24 Marq. L. Rev. 227 (1940).  
Available at: <http://scholarship.law.marquette.edu/mulr/vol24/iss4/11>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact [megan.obrien@marquette.edu](mailto:megan.obrien@marquette.edu).

## BOOK REVIEWS

*Federal Regulatory Action and Control.* By Frederick F. Blachley and Miriam E. Oatman. The Brookings Institution, Washington, D. C., 1940. Pp. XVIII, 356. \$3.00.

In order to start this analysis and "place" this volume on public administration, a reviewer cannot do better than to quote from the authors' preface. "This book which is largely preliminary in nature, describes briefly the organization, legal status, and relationships of the federal administrative system. The primary object of the book is to contribute to an understanding of the multitude of problems in law and administration which must be solved if federal intervention in the economic realm is to be both efficient and legal. In this study no questions are raised concerning either the value of the constitutional structure . . . or the wisdom of Congress in adopting certain economic policies and establishing the present types of government intervention. The inquiry is confined to the much narrower problem of explaining the principal features of the administrative system . . . and of examining and evaluating suggestions for the improvement of that system."

Almost all of Part I—140 pages of the book—is devoted to background material. A simplified and lucid statement as to the bases of the present system, the types of authorities and their relationships, the forms of, the enforcement of, and the control over administrative action is portrayed in this first part of the treatise. All of these pages are essential for an understanding of the material which is to follow. Although the delineation is done in small space, it is done without compromising the dictates of sound scholarship. The reader will get a very good overall view of the administrative scheme of things.

The most interesting and suggestive part of this volume, however, is Part II which is made up of 127 pages. (The book concludes with a section of supporting statements of 85 pages.) It is in this division that the authors discuss the three chief schools of thought that have developed in an attempt to solve the problems in the field of public law. Here the approach is intensely realistic. Mr. Blachley and Miss Oatman show complete recognition that they are dealing with facts rather than with something theoretical. Drawing upon their thorough understanding of the functioning of our federal system of controls, the authors exhibit the critical point of view of the government technician. The result is a comprehensive and painstakingly fair analysis of the philosophy of those who would subject the whole process of government administration to much greater executive control, the reasoning of those who would subject the same area to a more pervasive and strict judicial control, and the attitude of those who would scientifically revise the present system.

The authors logical and conservative (using the word to mean sanely progressive) outlook seems to the reviewer to be pretty well summed up on page 230. After pointing out that strict executive control would result in subordinating the legislative powers of Congress, the compilers of this volume condemn the philosophy of the American Bar Association's Committee on Administrative Law (as represented in the Walter-Logan Bill now pending in Congress) which

calls for strict judicial control. In the following words the A. B. A.'s attitude is criticized:

"The theory is based on the moribund conception that law cannot prevail or justice be done except through the courts. It fails to accord to administrative authority and procedures the degree of power and finality which the courts themselves, applying the laws under the Constitution of the United States, have recognized as belonging to those authorities and procedures. Because it looks backward and tries to revive the very system of judicial regulation of business and industry which proved so impossible as to lead to the establishment of administrative regulatory bodies, it should be discarded. Because it destroys and does not construct, because it offers no real protection to the citizen but does menace effective administration, because it rests upon dead theory instead of evolving reality, the doctrine of judicial formula should be rejected."

By their rejection of the executive management theory, the NEW in political science, and the strict judicial formula theory, the OLD in political science, the authors proved themselves forward looking conservatives. They were not cowards when they suggested a real system—a system which wisely combined the good in the old and new.

This system is not presented to the reader in general terms or through intangible ideas. The reader is referred to the analysis made in Part I of this volume, and then is very definitely and through numerous concrete examples shown that the specific work of specific administrative tribunals must be thoroughly analyzed, understood and appreciated before we can devise a workable system of administration which we will be sure will not substitute "a labyrinth in which the rights of individuals can be nullified," to borrow a phrase from the A. B. A.'s Special Committee on Administrative Law. The authors point to their own detailed studies and those made, and now being made, by the Attorney General's Committee on Administrative Procedure, and sound the warning that reform should not be drastic but scientific—that is, based upon a known factual foundation. The writers of this volume appreciate that a plan can be formulated only if the picture is perfectly clear. The authors intelligently realize that there is great room for improvement, clarification, and simplification, but they know that the field is so complex that no reform is worthy of the name which is not based upon scientific foundations. The authors are not fooled by appearances or by "mental processes." They react only to fundamental functions, and sanely take the attitude that the function which a board or an official performs should to a large extent determine procedures. The present reviewer is in full accord with such an outlook.

Two major recommendations relative to administrative procedures merit reproduction because of their intrinsic soundness, and because they reflect the sober and thoughtful tone of the entire work.

1. The independence of authorities which are carrying out long time regulatory processes should be maintained.
2. A high constitutional administrative court should be established to hear appeals from administrative action involving a case or controversy.

Upon completion of this book the reviewer had the feeling that he had read one of the most thought provoking additions to the literature of public law. The book is replete with concrete criticism and suggestion. It avoids the caustic

and merits great praise for its fairness. It is exceedingly well written and readable. It is refreshing to read something not tainted with radical New Deal theories or beclouded with anti-New Deal propaganda. This volume should be read by all students of public administration.

REYNOLDS C. SEITZ.

---

*Bankruptcy and Reorganization.* By Arthur W. Selverstone. Harmon Publications, Brooklyn, N. Y. 1940. Pp. XXXIX, 560. \$4.00.

The Bankruptcy Act has been for more than forty years an integral part of our economic system. Lately the needs of the business world and the economic welfare of the country demanded an extension of the Act to include relief other than liquidation. Still more recently, the Act has been rewritten, new conceptions worked in and some radical changes made. Some of these were a result of abuses revealed during the period of economic readjustment, either because of the limited scope of the Act or because parts of it were unworkable. Other modifications were dictated by the personal philosophy of those empowered to revise the Act. Such modifications or additions changed the fundamental philosophy of the statutes.

There is, therefore, a present need for a simplified text on bankruptcy and reorganization. It is the author's hope that his work will be a distinct aid to the student as well as the practitioner. This hope will no doubt be realized so far as the student is concerned, but the lawyer, who devotes much of his time to bankruptcy and reorganization practice, will have little use for the work. He already is familiar with the changes and in his practice is using treatises of several volumes, as well as specialized services. However, the book will appeal to the practitioner who occasionally has a bankruptcy and to the law student. No doubt, business men and accountants will find it valuable and helpful.

This one volume text is up to date and within its limitations can be said to be complete. It is complete in the sense that it briefly covers the entire bankruptcy Act. Only about three-fifths of the book is devoted to text. One cannot say that it is an adequate text or that it contains a thorough analysis of the subject. Its greatest value will be found in its condensation of the statutes and in its arrangement. The table of contents will prove helpful to the average practitioner and law student. This is exceptionally complete and well arranged. It is here that the lead to the section of the Act can easily be found for the problem in mind. The text, however, has little to offer, but a slight rephrasing of the statutes. Most of the problems of interpretation of the language of the Act recur in the text. Having used the text as a key, the searcher can go more quickly to the other sources of law.

About two hundred and forty-five pages are devoted to the table of authorities cited, the text of the Bankruptcy Act, the general orders, the reference tables to the sections of the Act and orders cited, and the index. The book is well printed and presentable. Citations are generally to the federal courts. There are some citations of unofficial state reports without any designation of the particular state or year.

One who wishes a summary of the Bankruptcy Act and its workings—a bird's-eye view of the exterior—will not be disappointed in using this work, but it will not adequately serve one who is practicing Bankruptcy Law.

E. H. HALLOWS.