

# The Growth of American Administrative Law

Carl B. Rix

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



Part of the [Law Commons](#)

---

### Repository Citation

Carl B. Rix, *The Growth of American Administrative Law*, 8 Marq. L. Rev. 310 (1924).  
Available at: <http://scholarship.law.marquette.edu/mulr/vol8/iss4/13>

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).

law of this state as well as a treatise on practice in courts of justices of the peace. No matter in what justice court you had occasion to try a case you were always sure to find *Bryant's Wisconsin Justice* on the desk of the justice of the peace and the justice was quite familiar with it. In fact he believed that *It was the law itself of Wisconsin*. It is no wonder then that this book is going into its ninth edition.

Marquette Law School especially welcomes the ninth edition of this volume since one of its alumni, Francis A. Darnieder of the class of 1917, revised this edition. Mr. Darnieder was an exceptional student at this school and very successful in the practice. He is a lawyer well fitted to do this work. The lapse of fifteen years since the former edition has made this edition highly necessary. The work is greatly enlarged. The decisions and the statutes have been brought down to date. New matter had been added. Chapters on Automobiles, Special Municipal Courts and the Civil Court of Milwaukee County are entirely new. In short, this edition is more full and complete than ever before.

There is no doubt that the bench and bar of Wisconsin will be greatly pleased with the edition and find it very useful. My examination of the book leads me to believe that this edition will make *Bryant's Wisconsin Justice* more popular than ever.

MAX SCHÖETZ, JR.

GORDON'S ANNOTATED FORMS OF AGREEMENT. By SAUL GORDON PRENTICE-HALL, Inc. 1923. pp. lxiii, 919.

The author, a member of the New York Bar, has collected forms of various agreements, using that word in its most inclusive legal sense, which have been tested by actual use and many of which have been "drawn from the reservoirs of litigation." The forms are completely annotated but as most of the decisions are those of the New York courts the work must be used in conjunction with local statutes and decisions.

In general the forms are free from archaic verbiage but clearness is not sacrificed for the sake of brevity. The work is adapted to modern needs and the chapters covering advertising agreements, assignments, master and servant, and mortgagor and mortgagee, are entitled to special attention.

The table of contents, table of cases and index make the book conveniently workable.

The work should commend itself to both student and practitioner as a valuable aid in the difficult and important task of legal draftsmanship.

HOWARD A. HARTMAN

THE GROWTH OF AMERICAN ADMINISTRATIVE LAW. By ERNST FREUND, ROBERT V. FLETCHER, JOSEPH E. DAVIES, CUTHBERT W. POUND, JOHN A. KURTZ, and CHARLES NAGEL. St. Louis: THOMAS LAW BOOK COMPANY. 1923. pp. 190.

The profession is indebted to the Bar Association of St. Louis for the lectures printed under the heading of *The Growth of American Administrative Law*. This book should be of unusual interest to the attorneys of Wisconsin. Commission form of government to a great extent is a component part of the "Wisconsin idea." Have we gone too far in this respect? Senator Borah recently referred to the startling growth of bureaucracy in these words:

"If these thirty years or the next are to be as the last thirty years, and everything indicates that they are, at the end of thirty years we will have one employe or officer for every ten citizens in the republic. Every conceivable activity of body and mind will be under the surveillance of a bureau. Spies and inspectors, guides and counsellors will leer upon the citizen from every corner and accompany him in his daily vocation of life. Our taxes will be over \$100 per capita. We will be taking more than forty per cent of the national income for governmental expenditures. We will

be a bureaucracy in reality, the most wasteful, the most extravagant, the most demoralizing and deadly form of government which God, in his inscrutable wisdom has ever permitted to torture the human family."

We may realize that Senator Borah's picture is not overdrawn when we read the following extract from Judge Pound's able lecture on the "Constitutional Aspects of Administrative Law":

"In a narrower sense, and as commonly used to-day, administrative law implies that branch of modern law under which the executive department of government, acting in a quasi legislative or quasi judicial capacity, interferes with the conduct of the individual for the purpose of promoting the well-being of the community, as under laws regulating public utility corporations, business affected with a public interest, professions, trades and callings, rates and prices, laws for the protection of the public health and safety and the promotion of the public convenience and advantage. In the states we have examining boards and other bodies to pass on the competency, responsibility or other qualifications of private schools, chauffeurs, engineers, surveyors, private detectives, real estate brokers, stockbrokers, teachers, chiropodists, nurses, public accountants, shorthand reporters, physicians and surgeons, midwives, peddlers, lawyers, dentists, pharmacists, plumbers, undertakers, embalmers, veterinarians, optometrists, architects, employees of the state and its civil divisions, and other professions, trades and callings; also boards and commissioners of education, public service commissions, probation commissions, parole boards, athletic commissions to regulate boxing and wrestling contests, racing commissions, bank examiners, insurance departments, transit commissions, health boards with divisions for the safeguarding of motherhood, saving of infant life and instruction in child hygiene, child welfare boards, tax commissions, tenement house commissions, building commissions, water power commissions, water control commissions, commissions for the blind and for mental defectives, recreation commissions, boards of charities, agricultural commissions with power to grant indemnities for diseased animals destroyed and for animals killed by dogs, conservation commissions, industrial courts, ("Miscalled a court," Taft, Ch. J., *Howat v. State of Kansas*, 42 Sup. Ct., 277, 278) workmen's compensation and industrial commissions, boards of child welfare for the granting of mothers' allowances, and motion picture commissions. In the United States the interstate commerce commission, the federal trade commission, the railroad labor board and other similar bodies exercise vast powers and carry grave responsibilities."

The constitutional question arising from the exercise of power by these many commissions and governing bodies is emphasized in each one of the lectures. Mr. Davies evidently has been rather fearful of the effects of the wide investigatory powers entrusted to the Federal Trade Commission. Such fears have been partially set at rest by the recent decision of the United States Supreme Court in the case of the *Federal Trade Commission v. American Tobacco Company*, decided March 17, 1924, and reported in the *Advance Opinions of the United States Supreme Court* on April 15, 1924, in which Justice Holmes, in an able opinion, says:

"The mere facts of carrying on a commerce not confined within state lines, and of being organized as a corporation, do not make men's affairs public, as those of a railroad company now may be. Any one who respects the spirit as well as the letter of the fourth amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried; as nothing short of the most explicit language would induce us to attribute to Congress that intent. The interruption of business, the possible revelation of trade secrets, and the expense that compliance with the commission's wholesale demand would cause, are the least considerations. It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up. \* \* \* The right of access given by the statute is to docu-

mentary evidence, not to all documents, but to such documents as are evidence."

Perhaps a study of this case is the reason why Senators Wheeler and Brookhart traveled to Washington-Court House, Ohio, instead of forcing the bank involved to produce all its records at Washington.

The contents of the book are as follows:

Historical Survey—Freund.

The Interstate Commerce Commission—Fletcher.

Federal Trade Commission—Davies.

Constitutional Aspects of Administrative Law—Pound.

State Public Service Commissions—Kurtz.

Federal Departmental Practice—Nagel.

When an attorney considers the number of times he is called upon to act in matters before commissions and governmental agencies he will realize the importance of the study of books containing material such as this. It has the merit of being short and will justify careful reading.

CARL B. RIX

---

THE AMERICAN JUDGE. By ANDREW A. BRUCE. New York: THE MACMILLAN COMPANY. 1924. pp. 218.

This book is one of a set comprising the Citizens' Library of Economics, Politics and Sociology, a set of books intended for the citizen as a layman. The title, *The American Judge*, while somewhat indicative of the contents therein, does not reveal the substance of the following chapters;

- II. Are the Courts Oligarchic or Democratic?
- III. The Courts, the Constitutions and the Regulation of Industry.
- IV. The Need of Clarifying the Law.
- V. Are the Courts Responsible for Lawlessness?
- VI. The Cost of Litigation—The Contingent Fee.
- VII. The Elective and Life-Term Judiciary.
- VIII. The Courts and the Legal Profession.
- IX. The Misinformed Enthusiast and the Courts.
- X. More Needed Reforms.
- XI. The Reign of Law.

Being conversant with the trials and vicissitudes of judges and thereby eminently qualified, he hastens to defend the judiciary against the accumulating criticism which has been heaped upon the courts in the past few years. He presents the issue squarely that this book will "attempt to throw some light upon the problem, to present at least the issues, to explode some fallacies, and to discuss the limitations as well as the needs of a government of law among men." (p. 12.) Its composition is very interesting and Judge Bruce's originality and keen observations enable him to convey his ideas in a most absorbing manner.

The main theme which permeates the entire book is that this is a government of laws, not of men, that the judiciary is the backbone in the final analysis of the stability of such a government. While a judge reflects the *mores* of his time, reflects the public attitude of mind and the public thought, yet the tradition of the bench and the law of the land makes it possible for him to render impartial justice. While it is admitted that at times decisions partake of judicial legislation yet old law must be adapted to the new situation and the legislatures never have kept and never will keep pace with the need. It is pointed out that practically all the law of master and servant, of negligence and contributory negligence, of common carriers, and practically all our commercial law has been made by the judges and not by the legislatures.

In vindication of the judiciary and the so-called usurpation of powers in declaring statutes void the author blames a great deal of this upon the legislatures. The passing of countless, premature, foolish laws, very often poorly argued on the floor of the assemblies, has resulted in the shifting of responsibility of the constitutionality of the laws upon the judiciary. This left the courts in the predicament of declaring void many laws and