

REVIEWS AND NOTICES.

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BUREAUCRACY AND ADMINISTRATIVE LAW.*

This is a lively book which ought to be read for two reasons. First of all it exposes a pessimism about the future of American constitutional law which carries with it the authority of a former Solicitor-General. It would obviously be improper to enlarge on this point of view, seeing that it is supported by details drawn from the daily life of a friendly neighbour. We only refer to it to draw attention to the fact that it is idle to study law *in vacuo* and apart from its social background, which convinces the learned author that the Constitution is "in process of deterioration." Secondly; and this is far more important, is the witness that the book bears to the enormous growth of bureaucracy in the United States. The elaboration of detail in proving the case is most marked, and will recall Lord Hewart's *New Despotism*, although the case is argued with a passion and even a vehemence which leave Lord Hewart's book comparatively sober. The details of illustration in the argument do not concern us; but the common growth of the system is of vital concern. The profession in Canada has too long affected to neglect the growth of "Departments," "Boards," "Commissions" and such like, whose work is of an increasing judicial or semi-judicial nature and is frequently beyond review by the Courts. We have given no serious thought to a situation where the complexities of modern life appear to demand the creation of such bodies, and yet they are obtaining larger and larger powers over the lives and affairs of citizens and these apart from serious review governed by the regular rules of evidence, procedure and judgment. In the rapidly narrowing field for doctoral theses, there might be found a law student in one of our universities who might write an admirable dissertation on the "Malign Influence of Dicey on the Mentality of the Legal Profession." It is for us not without significance that in England and in the United States distinguished judges, lawyers and jurists should at length turn the light of legal learning into the dark places of administration. It is no exaggeration to say that perhaps the most

* *Our Wonderland of Bureaucracy*. By James M. Beck, former Solicitor-General of the United States. Toronto: 1932, The Macmillan Co. Pp. ix, 272.

vital issue before the profession to-day is the growth of a system which we can no longer refuse to call administrative law. Whole sections of human affairs are being drawn within its ambit to which indeed there is no apparent limit. From almost every jurisdiction the same witness comes. If this continues unconsidered and unestimated in its implications, it will result in the withdrawal from the ordinary processes of legal adjudication of ever-increasing daily affairs. Mr. Beck's book is only another chapter in an indictment which is fortunately increasing, but to which Canada has unfortunately contributed little or nothing. A mere glance through the sessional statutes of any legislature in Canada would be sufficient to illustrate the fact that an obscurantist belief in Dicey's dogma of "the rule of law" is no longer either a true or reasonable or effectual creed. We have had an enjoyable time reading Mr. Beck's book; but its liveliness and strength of expression must not be allowed to discount the seriousness of a problem which demands attention, and is one in which the profession in Canada ought to be seriously interested.

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Legislative Regulation. By Ernst Freund. New York: The Commonwealth Fund, 1932, pp. xvi., 458.

To state that this book is published by the Commonwealth Fund is to predicate that it is a study of high rank. A work of Professor Freund in administrative law, however, does not need any imprimatur for his reputation in this field has been established by his treatise on *Administrative Powers over Persons and Property*, published in 1928. The present book is a complement to the earlier one. These productions of Professor Freund with that classic of Dicey, *Law and Public Opinion in England in the Nineteenth Century*, at least, should be read by Canadian lawyers if for no other reason than to dissipate the assumed, but somewhat empty, confidence of the average lawyer with respect to the limitations inherent in the legislative process, the functions and tasks of legislation, and particularly in relation to the technique of construing statute law. In the curriculum of Canadian Law Schools no place is given to a study of the possible objects of legislation, and the effectiveness of the various types of statutory enactments. When one has regard to the increasing use of legislation to achieve social reforms and to control the conduct of the individual at every turn it may well be that the Law Schools should give specific attention to the subject.

The regulative, rather than the declaratory, function of legislation is the concern of the author in this book; the abstract and theoretical aspects of legislation are not directly discussed. It deals with the practical problems of phraseology and style, available forms and method, and the technical detail of penal and civil regulation. These factors are equally important in determining the success of legislation with a consideration of the theoretical basis of legislative action. The author's illustrative citation of statutes are drawn both from the United States and England.

In an excellent chapter on the types of special legislation the author remarks that legislation by reference has been very unfavourably commented upon by courts and text-writers, but he makes clear that the objection to this type of legislation is to be found principally in the practice of, when legislating upon one subject-matter, making applicable the provisions of a statute relating to another subject-matter. Referential legislation has the advantage of promoting uniformity and harmony to the extent of its operation. Care should, however, be taken in enacting legislation of this type to ensure that the reference should operate so as to follow variations of the incorporated statute by subsequent amendment. Otherwise, a static condition is produced which may reflect a superseded legislative policy.

The chapter on "Policies and Standards" is the most suggestive one in the book. The section on the level of standards should be carefully studied and considered by the professional social reformer. The author states that, "it can rarely, if ever, be the object of legislative policy to enforce standards equal to the best that are voluntarily observed . . . High grade action does not ordinarily result from fear of punishment." The author points a moral, which is true in Canada as in the United States, when he contrasts the standard of a statute and the standard of administration of it. A variance between the two spells failure for the hopes of reformers who regard mere legislative action as a panacea for mal-adjustments in society.

The estimate of the work of the National Conference of Commissioners on Uniform State Laws should be interesting to Canadian readers as a basis of comparison with the endeavours of the Conference of Commissioners of Uniformity of Legislation in Canada. Forty-eight uniform statutes over a period of forty years have been drafted and recommended by the National Conference for adoption by the various states of the union. The Canadian Conference has in fifteen years recommended to provincial legislatures seventeen model statutes. When one examines the two lists of jurisdictions enacting the uniform acts prepared by the two bodies it appears that

those of the Canadian Conference have had, on a percentage basis, a larger measure of adoption.

The latter part of the book is not as interesting for consecutive reading as the first part but it will serve as a work of reference with respect to phraseology, terms and the technique of legislation useful to both the draftsman and the man who is called upon to interpret statutes.

The publication of this treatise and similar books in recent years emphasizes the growing importance of legislation in the science of law and the corresponding need for a scientific approach by experts to the examination of the many social, economic and political problems attendant upon the legislative process.

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CORRESPONDENCE.

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HON. N. W. ROWELL AT WASHINGTON.

The Editor of the Canadian Bar Review:

Sir,

Your note in the October issue about Mr. Rowell's recent address at Washington, which evidently made a great impression, reminds me of a conversation I had in 1924 with an American lawyer in London at one of the many dinners given in that year by the English Bar and others to the American and Canadian Bar Associations. At this dinner Mr. Rowell was one of the speakers. My American friend leaned over to me and remarking on Mr. Rowell's great ability went on to say that he had heard him speak in (I think) New York and that in the course of his address on that occasion Mr. Rowell had made some surprising statements—that Canada managed her own domestic affairs, through a Government of her own choosing, and that the Governor-General appointed by the British Crown was bound by the Constitution to follow the advice of his Canadian ministers and was not entitled to interfere, either on his own initiative or on instructions of the Home Government!

My friend went on to ask, with some amazement: Would Mr. Rowell dare to say these things in Canada or London, or were they for American consumption?

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