



1953

# Lavery: Federal Administrative Law: Its Practice and Application

Reginald Parker

Follow this and additional works at: <https://digitalcommons.law.yale.edu/ylj>

## Recommended Citation

Reginald Parker, *Lavery: Federal Administrative Law: Its Practice and Application*, 62 *YALE L.J.* (1953).  
Available at: <https://digitalcommons.law.yale.edu/ylj/vol62/iss8/8>

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in *Yale Law Journal* by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact [julian.aiken@yale.edu](mailto:julian.aiken@yale.edu).

battery, false imprisonment, trespass, etc.), privileges, negligence, strict liability, misrepresentation, defamation, and other odds and ends, and finally, interference with contractual and other advantageous relations. Several minor innovations might be mentioned. In connection with the intentional wrongs, there is a chapter on punitive damages; in the part dealing with negligence, there is a chapter on compensatory damages and one on survival and wrongful death. Cases involving these problems are to be found in every torts casebook, to be sure, but in this one they are given more emphasis and more orderly attention. The same may be said for the chapter on tort and contract where one finds the cases on liability of manufacturers for defective chattels.

This book is plagued by the same evil that all other torts casebooks suffer from—it is too long. The editors boast that they have omitted this and that “in order to keep the book within reasonable limits.” They admit that the book contains 415 principal cases “which is as many as can adequately be discussed in class.” This is a ridiculous statement. If a teacher can have 415 principal cases adequately discussed in class, he can have 4015 discussed. There are 1239 pages in this book. The editors are to be congratulated, however, on avoiding one bad feature of all casebooks—a poor index. Smith and Prosser has no index at all.

FOWLER V. HARPER†

FEDERAL ADMINISTRATIVE LAW: ITS PRACTICE AND APPLICATION. By Urban A. Lavery. St. Paul: West Publishing Co., 1952. Pp. xi, 518. \$12.00.

FROM full-page advertisements in every National Reporter as well as from correspondence with the publisher we understand that this book is intended for “the practitioner” rather than school use. Of course, there can be no book which is useful for the theoretician but not the practitioner. The more “theory” the latter can get, the better for his practice as a lawyer or judge. On the other hand, there are undoubtedly works that are more immediately helpful to bench and bar than to university study and teaching in view of their exhaustive treatment of details destined to aid precedent-hunting advocates.

Be this as it may, I can readily verify that the present volume is of no use to students or teachers. This, however, does not mean that it could be of any value to the practitioner. Indeed, it is not.

The book consists of three parts: I. “The Administrative Procedure Act”; II. “The 100 Major Federal Agencies”; III. “Administrative Rule-Making.” There is, however, no integration of these parts with one another. Thus the first one, in discussing Section 4 of the Administrative Procedure Act, deals with rule-making without utilizing corresponding sections of Part III; and the agencies listed in Part II are discussed without regard to their procedures.

---

†Professor of Law, Yale Law School.

Part II (to begin with the one where an adequate job would have been relatively simple) is spread over nearly 200 pages that attempt to describe, somewhat less accurately than the inexpensive U.S. Government Manual, 100 "major" agencies. It includes agencies of dubious importance for the average practitioner, such as the TVA or the Bureau of Animal Industry; but it does not include such bureaus of major legal importance as the Civil Service Commission (!), the Atomic Energy Commission, or the Register of Copyrights.<sup>1</sup> And what are practitioners—or teachers and students—to do with a description of the Labor Department's Wage and Hour Division consisting of three (3) sentences?<sup>2</sup>

Part I is a shallow, inadequately documented treatise on the several sections of the APA, saying considerably less than any one of the recent books and articles written on these subjects. But the author could not avail himself of the literature of the two years prior to the date of the book (October 1952); for, in actual fact, the book's coverage barely goes as far as September 1950 with the exception of Section 1044A, which deals with the *Steel Seizure* case<sup>3</sup> and was put in at the last moment.

Part III, despite its title "Rule-Making," actually deals in the main with the *Federal Register*, the *Code of Federal Regulations*, and Presidential rule-making. Precious space is consumed with now obsolete discussions of the chaotic conditions prevailing prior to the creation of *Register* and *Code* as well as with a seemingly superfluous dispute over the difference, if any, between Executive Orders and Presidential Proclamations. On the other hand, nowhere does the author concern himself with helping his reader through the distinction between the two main types<sup>4</sup> of rule-making under APA Section 4(b), that is, quasi-judicial and the ordinary rule-making procedures. Mr. Lavery's discussion just never gets at the significant facts of life under the federal procedures.<sup>5</sup>

1. Nor do we learn from the book of the Labor Secretary's very important quasi-judicial function, exercised through deputy commissioners, of administering the Longshoremen's and Harbor Workers' Compensation Act.

2. The first two sentences are devoted to the "Historic Origin" of that agency. The third one, under the promising title "Specific Statutory Authority," reads as follows: "The major function of the 'Wage and Hour Division,' as already indicated [where?], is to carry out the provisions of the 'Fair Labor Standards Act' of 1938 (29 U.S.C.A. § 201 *et seq.*)." And that's all.

3. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Discussion of the case is in the rule-making part of the book, though actually the President's action was in the nature of an individual decision—the seizure of a single, named enterprise.

4. Actually there exist at least five kinds of federal rule-making procedures. See DAVIS, *ADMINISTRATIVE LAW* 229-72 (1952); PARKER, *ADMINISTRATIVE LAW: A TEXT* 144-201 (1952); Parker, *Federal Administrative Regulations*, 6 *MIAMI L.Q.* 324 (1952).

5. *E.g.*, in Section 73 the author states that there is no constitutional right to a hearing before rule-making, without mentioning that there may be, and very often is, a statutory right to be heard in a due process-like fashion.

Davis's admirable text on administrative law was published by West in the early fall of 1951. Its preface is dated April 1951 and both text and documentation are up to that date. It has 1024 pages, a good bibliography, and a list of about 2,000 cases. It costs \$8. The present volume, on the other hand, was published by the same publisher late in 1952 with a preface dated October 1952. But, as stated above, its coverage does not go beyond September 1950.<sup>6</sup> It has 518 pages, three separate indexes which make it hard to look up anything, no bibliography (hardly any writings, except official materials, of a date later than 1930 are cited anywhere), and it uses but 170 cases. The book costs \$12. Why did a publisher of West's reputation put it out?

REGINALD PARKER†

WARUM WURDE KRUPP VERURTEILT? By Tilo Freiherr von Wilmowsky. Stuttgart: Friedrich Vorwerk Verlag, 1950. Pp. 224. Dm. 7.80.

THE current revival of West German industry under traditional German industrial leadership gives timeliness to a German defense of the Krupp industrial empire, published as early as 1950.

In 1948, the Krupp leadership was imprisoned and stripped of its industrial assets upon conviction on charges of spoliation and mistreatment of slave-labor.<sup>1</sup> In 1951 both Krupp men and Krupp fortunes were released by executive fiat:<sup>2</sup> a United States High Commissioner voided the judgment of a military tribunal of American judges.<sup>3</sup>

---

6. Thus the book fails to include the rulings of the Supreme Court in such recent administrative-legal landmarks as *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951); *NLRB v. Pittsburgh S.S. Co.*, 340 U.S. 498 (1951); *Riss & Co. v. United States*, 341 U.S. 907 (1951). It also fails to discuss administrative aspects of the Internal Security Act and of the McCarran Immigration Act.

†Professor of Law, Willamette University.

1. See 9 TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS 1449-54 (1950) (hereinafter cited as TRIALS OF WAR CRIMINALS). Deprivation of stolen property was specifically authorized by the original Nuremberg Charter. CHARTER OF INTERNATIONAL MILITARY TRIBUNAL, art. 28. A more general property forfeiture was authorized under the inter-Allied Control Council Law No. 10, art. II, § 3, which governed the subsequent proceedings.

2. N.Y. Times, Feb. 1, 1951, p. 1, col. 2.

3. Krupp's reprieve cannot be viewed as an isolated phenomenon in Germany under Allied auspices. "The very men who were the core of the cartel movement in Germany were the ones who brought Hitler to power. Now this same group of men has been returned to power. They have picked up where they left off." Testimony of J. S. Martin, former special assistant to the Attorney General, *Hearings before the Subcommittee on Study of Monopoly Power of the House Committee on the Judiciary*, 81st Cong., 2d Sess., Serial 14, Pt. 4A, 406 (1950). The composition of the present German management of the iron and steel industries in the American and British zones is "scarcely distinguishable from the old Stahlwerks-Verband." *Ibid.*