ADMINISTRATIVE LAW. By Kenneth Culp Davis.* St. Paul: West Publishing Co., 1951. Pp. xvi, 1024. $8.00.

ADMINISTRATIVE LAW. By Reginald Parker.** Indianapolis: The Bobbs-Merrill Co., Inc., 1952. Pp. x, 344. $5.50.

Administrative law in the United States, despite its growing importance and a large volume of controversial literature and of scholarly articles dealing with particular aspects of it, has lacked not only rubrics in the digests and encyclopedias until recently[1] but also comprehensive works to bring together its various aspects and furnish a starting point for study and research.[2] Now with the publication of these two books it is supplied with a pair of texts which practicing lawyers, law teachers, and students of law can use to excellent advantage. Understanding of the subject and the insight with which problems in this area are handled professionally should improve considerably as a result.

Neither book is the dull, uncritical type of text which has been so common among law books in this country. Rather, each is the work of a discriminating scholar whose analysis and judgments make first-rate contributions to knowledge and to the ideas which can be applied in the future. Each author takes vigorous positions with respect to many controversial issues, with Davis especially suggesting solutions to many troublesome problems; but opposing points of view are recognized and justly stated. The result is enhancement of interest for readers and stimulus to the thought of those who keep open minds or, perhaps, react adversely because of opposing views. Each book can be read through for general information or used in the search for authorities on a particular topic.

Professor Davis's work is the richer of the two. Not only does it devote approximately three times as much discussion to the same group of problems, which even then are treated briefly, but it results from a good many years of work that has been reflected in a battery of previous

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1. American Jurisprudence under the heading Public Administrative Law, and the Fifth Decennial Digest, were the first works of this type to take cognizance of the subject. The new A.L.R. and U.S. Supreme Court Digests also have the heading, Administrative Law, which thus is becoming fairly universal.

2. Previous works of a general nature include F. T. VON BAUR, FEDERAL ADMINISTRATIVE LAW (2 vols., 1942), which was published before present conceptions as to administrative law were consolidated by administrative procedure legislation; FRANK E. COOPER, ADMINISTRATIVE AGENCIES AND THE COURTS (1951), which reviews administrative procedure problems through reported judicial decisions; and M. M. CARROW, THE BACKGROUND OF ADMINISTRATIVE LAW (1948), which purports only to introduce the subject.

articles in legal periodicals. These are here brought down to date, welded together, and supplemented to form the substantial treatise that results. In all of this work the author has made use of observation and experience as well as of research in printed material.[3] Professor Parker,[4] who has made good use of printed sources, including Davis's articles to which he gives full credit, has chosen to write with the utmost brevity and with frequent use of footnotes to supplement the principal text; but the presentation is adequate for those, at least, who read with faculties alert.

Both authors concentrate heavily on Federal material—Parker to the virtual exclusion of material relating to the states and Davis with incidental resort to significant lines of state authority that add to the thought or the variety of experience presented in the book. The structure of each book is based on the classification of subject matter which has become standard in the field of administrative law since the report of the Attorney General's Committee on Administrative Procedure and the adoption of administrative procedure legislation[5] have given it currency. That classification employs the development, characteristics, and operating functions of administrative agencies; procedure in rule-making; procedure in adjudication; and judicial review of administrative determinations, as major categories. Davis, however, uses the titles of 20 chapters as main headings which are not grouped under the larger categories they follow; while Parker gathers his 22 chapters into six "Parts" of his book. The first two of these, together with Chapters 1 and 2 of Part Three, deal with matters in the first main category mentioned above. Parts Four, Five, and Six deal with judicial review, including damage claims for wrongful administrative acts; but together these cover only 50 pages, whereas Chapters 3 and 4 of Part Two are made to do duty for administrative regulations and decisions, respectively—each in more than 50 pages. The concentration of complex procedural matters under single subdivisions of the latter two chapters detracts from clarity of presentation. Subtopic (3) of the chapter on Decisions,

3. Professor Davis was a member of the staff of the federal Attorney General's Committee on Administrative Procedure and the author of several of its monograph studies of specific agencies. He also served on the staff of the Board of Investigation and Research, established by the Transportation Act of 1940.

4. The Federal Administrative Procedure Act, 60 STAT. 237 (1946), 5 U.S.C. § 1001 *et seq.*, is printed in the appendix to each of the books under review. In Indiana two statutes embrace the same subject matter: the act concerning rules and regulations, IND. ANN. STAT. §§ 60-1501 *et seq.* (Burns Repl., 1951) and the act concerning administrative adjudication, *id.* § 63-3001 *et seq.* The Model State Administrative Procedure Act issued by the National Conference of Commissioners on Uniform State Laws in 1946, is well discussed in a symposium in IOWA L. REV., No. 2 (January, 1948). An increasing number of states are adopting similar legislation.

5. Pp. 131-133.

for example, which takes up 30 pages, covers in rapid-fire fashion, without a break, all of the incidents of an adjudicative hearing, from notice through the conduct of the hearing and the applicable principles of evidence to the process of decision. In Davis's book these same matters take up seven chapters covering almost 300 pages.

A difference between the stated concepts of administrative law employed in the two books appears in their early pages. Both confine the subject largely to procedure. Davis, however, accepts the limitation of the scope of administrative law for professional legal purposes which confines it to matters "involving rights of private parties" and omits "internal problems affecting only the agencies and their officers and staffs." Parker, on the other hand, undertakes to deal with all of the law that is common to the various executive agencies of government; but he does not carry out this promise by including an account of civil service, budgetary, and management procedures. The only reflection of his broader definition that is visible, aside from reiterated insistence upon it,[6] is in good, brief discussions of the scope of the inherent power of the President[7] and of the contrasting degrees of security of tenure among civilian and military government personnel.[8] Davis too includes procedure affecting the tenure of civilian employees;[9] his discussion of delegation and subdelegation of powers, while dealing lightly with historical aspects, is satisfactory;[10] and his chapter on Supervising, Prosecuting, Advising, Declaring, and Informally Adjudicating[11] enters into many forms of administrative activity other than those conventionally deemed to affect private rights.[12] This chapter is, indeed, one of Davis's most original and masterful contributions to the literature of administrative law. In it, as well as at numerous other points in his book, Davis makes excellent use of material relating to administrative practice and to legislative history and action. His interweaving of this material with statutes and judicial decisions is one of the best features of the volume.

Outstanding among the matters which Davis discusses fully, with both realism and significant thought of his own, are administrative investigations; the legal effect of various types of general regulations; the numerous varieties of rule-making and adjudicative procedures, with reference to parties, notice and the framing of issues including pre-

6. Pp. 85-87.
7. P. 100.
8. Pp. 247-248.
9. Ch. 2.
10. Ch. 4.
11. *I.e.*, rule-making and adjudication.
12. Pp. 105-107.

hearing conferences, evidence, official notice, separation of functions, and bias; "institutional decisions" involving the contributions of hearing officer, staff, and agency heads to the final product; res judicata in relation to administrative decisions; primary jurisdiction and prerequisites to judicial review; forms of proceedings for judicial review; and scope of judicial review. Although differing with Davis on some controversial points, the present reviewer finds nothing significant to criticize in his presentation.

Parker deals much more briefly with roughly the same range of problems. He relies almost wholly on judicial decisions and statutory provisions; and his exclusion of state materials results in the omission of any discussion of the common-law extraordinary remedies, such as mandamus and certiorari, which are not used in federal judicial review proceedings. Certain weaknesses detract from the book, at least in the opinion of this reviewer. There is some tendency to use the traditional textbook method of positive statements, supported by authority, which may be qualified elsewhere and call for the reader to be on his guard lest he be misled. For example, the provisions of the Federal Administrative Procedure Act with regard to hearing examiners and the separation of functions in respect to them are summarized without recognition in the text at this point that some of the provisions do not apply in initial licensing or in rule-making as broadly defined by the Act,[13] although these limitations are stated elsewhere.[14] At another point the statement is made that due process requires that the right to counsel be accorded "in a legal procedure;"[15] and it requires a search of footnote cross-references to an earlier part of the text to disclose that the due process requirement is severely limited. Due process is, indeed, somewhat overworked in Professor Parker's text. To it are attributed, at least in particular passages, the procedural requirements of the first and second *Morgan* decisions[16] as well as other detailed requirements relating to notice and hearing,[17] together with the entire requirement that findings accompany an administrative decision;[18] whereas actually these rest on judicial interpretation of statutes to a considerable extent. Professor Parker stresses,

13. Pp. 66, 232-240.
14. P. 219.
15. P. 49.
16. Pp. 40-53.
17. P. 236.
18. P. 34. "Administrative acts of all kinds . . . *may or may not be required to satisfy due process of law* . . . ." (italics in original). See generally, pp. 34-38. At p. 39, however, "due process is a phrase of no precise meaning"; and at p. 203 the author refers to situations where "due process requirements are somewhat below the customary level."

although not consistently, the view that procedural due process embodies defined minimum standards and that it does or does not apply to particular proceedings as judicial decisions applying a constitution or statute determine, rather than the view—more logical for some—that *due* process must always be accorded and that the questions to be answered relate to what is due under particular circumstances.[19] Finally Professor Parker, despite his avowed broad governmental approach to administrative law and his devotion to at least one brand of jurisprudence,[20] betrays rather narrow professional prejudices at some point. Without actually examining their possible utility, for example, he objects sweepingly to special requirements for admission of lawyers to the bars of particular agencies;[21] and he stigmatizes with a mere exclamation point the freedom which the Administrative Procedure Act gives to agencies to have recommended decisions in rule-making and initial licensing prepared by a staff member "(not necessarily a trial examiner!)."[22] There is here none of the sort of examination of the extent of the need for staff contributions to a decision under some circumstances, such as Davis gives in his chapter on institutional decisions.

Although more might be said by way of criticism of particular passages in Parker's book, the over-all judgment remains that, read with due care, it constitutes a useful guide to the law of administrative procedure, with good analysis and commendable attention to the merits of controversial issues. Davis's book, in addition to these qualities, draws more thoroughly on available data and constitutes an addition of major importance to American legal literature.

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19. Citations to Kelsen and to no other comparable authority are frequent throughout his book.

20. Pp. 56-57.

21. P. 235.

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