

the lawyer, understanding the purpose and rationale behind accounting doctrine is as important as understanding the policy behind rules of law. Professor Shugerman's book does not itself provide this necessary background. Furthermore, it does not even adequately open for the reader the gateway to accounting treatises and periodicals.

In fairness to Professor Shugerman it should be recognized that he has attempted a difficult job. It is not easy to be brief yet comprehensive and simple yet analytic. Furthermore, it is by no means certain that the often difficult field of accounting can be effortlessly opened to lawyers who, after all, are not a breed apart. Perhaps subsequent editions of this work can remedy its defects while continuing to provide the desired simplicity.

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LAW AND SOCIAL CHANGE IN CONTEMPORARY BRITAIN. By Wolfgang Friedmann. London: Stevens & Sons, Ltd., 1951. Pp. xxiv, 322. \$6.75.

MR. Friedmann, the well-known author of *Legal Theory*, has worked his recent articles into a panorama of the rapidly changing legal scene. Against the background of the British and to some extent of the Commonwealth law, he presents a lucid description of the present status and function of property and contract, the relations between social insurance and tort, and a sketch of judicial withdrawal and neutrality in freedom of trade cases. To these chapters has been added a completely new section, scrutinizing the changed functions of Anglo-American trusts. On the basis of this analysis the author enters a plea for a more vigorous assertion of judicial authority in cases concerning professional bodies and private associations. The second and a good part of the third book provide some systematization of British public law, concentrating on extension of legal remedies, the relationship between contract and administrative law, the limits of administrative discretion, and conflicting methods of statutory interpretation.

In his last and somewhat controversial chapter, the author inquires into the place of the rule of law in a democratic planned society. The central thesis of the book is built around the demonstration that the rule of law is perfectly compatible with the major tenets and operations of such a society. This rule of law (construed without reference to Dicey's vindictiveness against administrative law and its exclusive enforcement through the law courts) possesses a dual function: judicial authority continues to safeguard individual rights; yet there is equal emphasis on its ability to assure equality of the law for those engaging in comparable legal transactions. To be sure, the effective extension of safeguards of individual rights through the abolition of civil and criminal immunities of the Crown and the current narrowing down of the Acts of

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State exemptions testifies that there exists no *a priori* incompatibility between the rule of law and the major tenets of a planned democratic society. However, the author rightly notes an important change: to the extent to which enforcement of such guarantees of individual rights is coming to rest with administrative tribunals, the traditional presumption favoring maintenance of private rights, an historical rather than a necessary part of the rule of law, no longer possesses full force. It is whittled down to something akin to the doctrine of the least injustice to the private rights of the few consonant with the carrying out of the social objective of the specific legislation.¹ Equally, the state of mobilization, characterized by the author as a permanent feature of Western society, inevitably reinforces the authority of the administrative decision; the likelihood of reversal by the courts has been lessened by the apparent necessity to uphold constituted authority. Hence the author's optimism which sees in *Liversidge v. Anderson*² only an exception rather than a pattern may be a bit oversanguine. It would probably have been more justifiable to argue that the range of administrative decisions falling under this category is not broad enough to negate the very principle of the rule of law.

So far we have mainly been concerned with actions in which the state and an individual figured as the parties to the contest. As pertinent, if not more, for the meaning of the rule of law in a planned democratic society is the rapidly diminishing scope of all other types of actions in which courts effectively interfere. The author himself strongly insists on the transfer of decision-making authority to parliamentary, *i.e.*, political, authorities in the field of planning. He is a little less certain, however, where to put control over contending, organized groups, and he has harbored some illusions about courts' possible intervention in solving intragroup conflicts in professional bodies. Yet actually from the six major types of disputes (intra and intergroup controversies, disputes between outsiders and the group, between the state and the group, the state and isolated individuals, and among individuals without group protection), court determination is still conclusive in only the last two categories. As to the other groups, decision-making power either rests with political authorities inside the group itself or presently lacks any definite localization.

If the author had more clearly realized that both the limits and achievements of the rule of law rest on the presence of a body of general rules rather than on the ability authoritatively to improvise solutions for unchartered situations, he would also have perceived that the absence of such rules thwarts realization of the equality principle. The necessary distinctions which Parliament is making in allocating resources, as any other fundamental decisions of

1. Shawcross, *The State and the Law*, 11 Mod. L. Rev. 1 (1948).

2. [1941] 3 All E.R. 338 (P.C. 1941) (action against Home Secretary for false imprisonment under emergency regulation 18B denied by majority of Privy Council; "reasonable belief" of Home Secretary construed as meaning subjective belief in reasonable cause without obligation to submit evidence allowing judicial examination of yardstick of reasonableness).

an emerging societal order, may create the preconditions for a future system of equality but they hardly apply a rule of equality to existing conditions. And as to those areas, immense in United States society but considerable enough in Britain, where at present neither the writ of Parliament nor of the courts is singularly effective, equality of treatment—the author's inherent element of the rule of law—has more often than not come to rest with the group's own and rather tenuous estimates of the dictates of justice.

To be sure, in the author's comparison between the hazards of economic competition and the hazards inherent in a contract of the planned society, unilaterally terminated by its government partner, the rule of law emerges stronger in the new society. It does so because a benign government of democratic planners grants the individual some legally enforceable indemnity, refused to the victim who succumbed to the laws of competition. Yet the author's comparison is lopsided: capitalist society claims greater rationality and predictability for its total societal results rather than a more perfect justice for the individual.

What, then, is the meaning of the rule of law in a democratic society in which a substantial amount of social planning has been accepted by the majority of the community? The author himself betrays a certain amount of doubt in this respect. This is shown by his conclusion "that it would be unwise to expect too much from the law." In reality, no uniform answer is possible, at least at this stage. Traditional protection continues in cases with conflicting individual claims. Extension of the rule of law to the ever expanding field of state-individual relations—though with some reservations—protects the individual effectively in situations of manifest social inequality; at the same time it throws the workings of the administrative apparatus open to outside and thus reasonably impartial examination. By its very existence, this scrutiny, even if necessarily sketchy, diffuse, and haphazard, imposes definite restraints on the administrative bureaucracy. The effectiveness of the rule of law diminishes to the extent to which it is made to cover intragroup, intergroup, and state-group relations. It has always proven difficult to subject the sovereign effectively to the law. And in the democratic society of the British, and even more so in the United States, the more important social groupings come closest to the traditional role of the sovereign. From their vantage point these groups are able to resist successfully the creation of new general rules, the existence of which would be the major guarantee that the groups would be effectively brought under the rule of law.³

In concentrating on the formulations of the author's last chapter, rather than commenting more exhaustively on the timely surveys and analyses of contemporary problems in the remainder of the book, this reviewer feels guilty of

3. It is for these very reasons that the suggestion of Clyde W. Summers, to pattern legal rules for dealing with the internal structure of unions after those developed to protect personal freedom, is bound to meet considerable skepticism. Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1101 (1952).

having done less than justice to this provocative contribution to present legal literature. It is a work which serves admirably to focus attention on both possibilities and limits of the judicial process in our society.

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PUBLIC ADMINISTRATION AND POLICY DEVELOPMENT: A CASE BOOK. Edited by Harold Stein. New York: Harcourt Brace & Company, 1952. Pp. xlv, 860. \$5.00.

THE first American textbooks on public administration were published only a generation ago. Yet for well over half of this period there have been sharp questionings among students of the subject over how what is knowable about public administration can best be discovered, be recorded, be communicated to oncoming groups of students and be brought into the consciousness of officials charged with the solution of administrative problems.

The most recent answer to these questionings is the case approach fostered by the Committee on Public Administration Cases from 1948-51 and, beginning in 1952, by the Inter-University Case Program. Dr. Harold Stein, staff director of these organizations, has brought together twenty-six cases prepared by twenty-one authors, and has prefaced them with a valuable introduction on the purposes and uses of public administration cases.

To understand the nature of a public administration case as conceived by Dr. Stein and his associates, it is well to dismiss superficial analogies to the case presented in the traditional law school casebook. It would be difficult indeed to brief from a public administration case the facts, the question, the decision, and the rationalization of the decision. Nor are there "leading cases" in public administration that serve as authoritative precedents for lower-level or subsequent administrators. Whatever the case may be in law, it appears infinitely more complex in administration. The published case in public administration finds a legal analogy only in what a discerning and thoughtful law teacher may achieve in his classroom by patiently tracing the evolution of the case from its inception and by exploring the many factors—some irrational—that explain, without necessarily justifying, the court's decision.

The public administration case, it is true, usually has an administrative decision or a succession of decisions as its subject. The task of the case-writer, however, is to uncover the realistic factors of individual motivations, political considerations, interest group pressures, breakdowns of procedures, guildism of "experts," bureaucratic concern with status and self-preservation, and personal congenialities and antagonisms as they help to explain the decision, its timing, and its results. A case, however, does not neatly order these con-

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