

## Foreword

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ON THE frontiers of the social order we can expect to find scholarship unusually prolific, and in recent years no legal frontier has invoked more intensive effort than has American administrative law. In law review articles, reports, monographs, and treatises, legal literature has teemed with discussion of every phase of the subject, both general and particular. Able legal writers—Benjamin, Dickinson, Freund, Gellhorn, Goodnow, Landis, and Sharfman, to name only a few from a very long list—have expounded the theory and embellished the practice in every nook and corner. They have given administrative law an important niche in American jurisprudence, so much so that at long last even the digest-makers now give it recognition in tables of contents and key number systems. Across the Atlantic, writings of such leaders of legal thought as Sir Cecil Carr, Lord Hewart, and Professors Robson and Wade have opened the way to understanding of English theory and practice. At the level of practical administrative operations, the President's Committee on Administrative Management and the United States Attorney General's Committee on Administrative Procedure have made available comprehensive studies of administrative organization and procedure as they are found among federal administrative agencies, studies that have been ably paralleled for state agencies by the Benjamin report, *Administrative Adjudication in the State of New York*. In the legislative branch the Federal Administrative Procedure Act of 1946 and equivalent state enactments in Wisconsin, California, Missouri, and elsewhere have instituted the practice of statutory codification of administrative procedure. These statutes are milestones in procedural law. They have evoked a wealth of periodical comment,

both pro and con. In fact, administrative agencies, though frequently the object of criticism and even distrust, are now fully accepted as an essential part of the modern social, economic, and political order. American administrative law, born in its modern aspect not more than two generations ago, has definitely come of age.

In the United States, in sharp contrast with practice in Great Britain, and, indeed, with that in most continental countries, we have committed ourselves to judicial control of administration and administrative agencies. It is an accepted part of our constitutional theory of distribution of powers. We look to the judiciary for protection of rights and liberties—for protection against the hazards of uncontrolled bureaucracy.

Judicial control is manifested in two principal ways. In the first place, we command administrative agencies to follow the usual judicial patterns of procedure in conducting their quasi-judicial processes, and to a certain extent we impose equivalent requirements in connection with quasi-legislation, the promulgation of administrative rules. Notice to interested parties, with opportunity to be heard orally and in writing, subpoenas and subpoenas *duces tecum*, rules of evidence in quasi-judicial proceedings differing not too widely from common-law standards, orders based upon written opinions setting forth conclusions of fact and law—all of these are required as part of the administrative process. In short we believe in the virtue of the “paraphernalia” of the judicial process as a means of channeling the administrative process and thereby assuring fair play. Then, in the second place, and even more importantly, we are committed to a thorough-going doctrine and practice of judicial review of administrative rules and orders. Constitutional questions, questions of interpretation, and all other legal questions the courts reserve to themselves for final judicial decision. Even with respect to fact questions, a certain measure of control is asserted and at

least a limited judicial review is made available. It is a fact that we are more trustful of courts than we are of administration, and we rely upon them and their processes to assure fair treatment for the individual. Judicial controls are definitely a part of our jurisprudence, in sharp contrast, it may be noted, to the practice in Britain, where judicial procedure is ordinarily not expected of administration and judicial review is virtually nonexistent. The British rely upon Parliamentary control of the ministerial departments. We rely upon the courts.

Notwithstanding the wealth of literature on administrative law, there is ample room for Mr. Cooper's volume, *Administrative Agencies and the Courts*, a volume which, with careful attention to practical detail, reflects our judicial attitude toward administrative agencies. The author, within reasonable confines, gives us a careful exposition of the judicial procedures that have been imposed upon administration as interpreted by judicial decision and the judicial limitations that have been evolved through the case law of judicial review, all to channel administrative agency powers and assure justice in administrative law. Both quasi-judicial and quasi-legislative processes are treated. Decisions of the agencies are used to capture the spirit of administrative law in action and to expound in concise form the details of the administrative processes themselves. The method and scope of judicial review of administrative decisions—our system of checking administrative error—are thoroughly covered. Court decisions, both federal and state, handed down in the various substantive fields in which administrative agencies play a part, are correlated. The principles generally applicable to the functioning of this new departure in American jurisprudence are presented. In this volume we have something a little different in the literature on administrative law—a systematic treatment, not too detailed for the student and the novitiate, yet sufficiently detailed to provide the

general background essential to a practical understanding of the relationship between the courts and administrative agencies in this country.

American administrative law, although a comparative newcomer in our jurisprudence, today rests on a firm juristic foundation, stemming from the prevailing statutes expounded and interpreted by some unusually high-grade, judge-made law, enlarging upon the statutes and correlating administrative practices to constitutional principles. The leading decisions are well known to all who work in the field. To name only a few, consider, for example, *Morgan v. United States*, *Prentis v. Atlantic Coast Line*, *Ohio Valley Water Company v. Ben Avon Borough*, *Crowell v. Benson*, *Rowan and Nichols Oil Company v. State Railroad Commission of Texas*, *Hearst v. National Labor Relations Board*, and only recently the important interpretation of the Federal Administrative Procedure Act expounded in *Universal Camera Corporation v. National Labor Relations Board*. All decided by the United States Supreme Court, these opinions are landmarks in the administrative law of the land. State Supreme Court decisions add to the wealth of material. For example, observe the series of great opinions of the Supreme Court of Wisconsin, *Borgnis v. Falk Company*, *State ex rel. Wisconsin Inspection Bureau v. Whitman*, *State ex rel. Madison Airport Co. v. Wrabetz*, *Tesch v. Industrial Commission*, and others. These are only illustrative of the very considerable body of valuable case law reflecting the judicial attitude toward administration—the foundation on which American administrative law rests.

Mr. Cooper's book serves to correlate these and many other judicial pronouncements in a volume which portrays well the relationship in American jurisprudence between the courts and administrative agencies. Statutes enacted by legislative bodies reveal occasional glimpses of statesmanship;

administrative pronouncements, made by men "appointed by law and informed by experience," sometimes reach a high level; but by and large in American administrative law we encounter most of our finest contributions to jurisprudence in the opinions of our courts. Mr. Cooper's volume is devoted primarily to those contributions.

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