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Administrative Law. By Kenneth Culp Davis.

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In concluding his lectures, Mr. Justice Roberts asserts that "progressively, the Supreme Court has limited and surrendered the role the Constitution was intended to confer upon it . . . the sharp division of powers intended has become blurred . . . doctrines . . . have more and more circumscribed the pristine powers of the states, which were intended to be reserved to them by the Constitution . . ."¹³ Considering the topics covered by the lectures, it seems that these strictures do not apply to the Court's sweeping curtailment of inter-governmental immunities from taxation. In so far as these conclusions involve the expansion of the federal commerce power, many readers will feel that this invasion of the powers of the states was not only a necessary but also a proper consequence of a widespread demand for uniform standards "for what was in effect a unified economy." And in respect to the impairment of federalism through the established interpretation of the Fourteenth Amendment, many readers will feel that Mr. Justice Roberts is merely reviving the attempt of the Supreme Court in the post-bellum days to read the Fourteenth Amendment out of the Constitution as far as possible, because to give it its obvious and intended effect would enlarge the protective powers of the Federal Government.

*Jacob D. Hyman**

ADMINISTRATIVE LAW. By Kenneth Culp Davis. St. Paul, Minnesota. West Publishing Company. 1951. Pp. XVI, 1024.

To most practicing lawyers, administrative law has been a forbidding field which they feared to enter but could not avoid. The problems of administrative law could not be fitted into familiar legal patterns, yet the field seemed to lack a structure of its own. Relevant precedents were elusive, for until recently the digest systems and encyclopedias have ignored its presence as a separate field. Law School casebooks provided a semblance of order, and law review articles provided penetrating insights into particular problems, but no comprehensive and systematic treatment was available.

For lawyers lost in the wilderness of administrative law, Professor Davis' book will come as a welcome guide. It provides a framework which organizes the subject matter into an intelligible and workable body of law. It presents a detailed analysis of the major problems of administrative law, and is carefully documented with all of the leading and most recent cases. Above all, it is thought-provoking and readable.

Professor Davis has not attempted to provide a handbook on the procedures

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or internal organization of particular agencies. He is primarily concerned with the legal limitations governing those administrative procedures through which regulatory policies are determined and individual cases decided. After brief treatment of the problems relating to the delegation of legislative power and to the power of agencies to make investigations, he turns to the main task of examining the judicially enforced rules which circumscribe the processes by which agency decisions are made.

The procedures for rule-making are treated separately from the procedures for adjudication, although the author recognizes that these two basic types of decision-making frequently shade indistinguishably into each other. The necessity for a hearing in rule-making, and the special types of hearing suitable for this process are acutely discussed. The distinctions between interpretative rules and legislative rules is set forth and the problems of retroactive rules considered.

The central core of the book, however, deals with adjudicatory procedures. Here are discussed the multitude of smaller problems—the type of notice required, the right to intervention, the functions of hearing officers, and the requirement of intermediate or proposed findings. The author deals more extensively with some of the larger problems—the use of subordinates in decision-making, the effect of bias in the deciding officers, the separation of prosecuting and judging functions, the admissibility of evidence, the use of facts known to the agency but not included in the record, and the necessity for findings of fact and reasons for the decision.

The final third of the book deals with the manifold aspects of judicial review. The author here presents an extremely detailed and helpful analysis of those difficult problems which a lawyer faces when he seeks judicial relief from agency action—what action is reviewable and what action is non-reviewable, what administrative remedies must first be exhausted, who has standing to challenge agency action, what procedure can be used to obtain review, and what will be the scope of review.

This brief summary of the contents of the book makes clear that its chief characteristic is its comprehensiveness. However, two other characteristics which distinguish it from most treatises need to be mentioned. First, it does not attempt to state definitive rules of law. Professor Davis well recognizes that administrative law can not be reduced to black letter type. He continually emphasizes that the procedure of each agency must be adapted to the special task to be performed. These variations in procedure make impossible fixed rules of law. Even general principles of fair hearing may have no application. Thus, the right of confrontation and cross examination may be meaningless in determining eligibility for social security benefits; the right to a public hearing would scarcely be sought

by a bank whose financial soundness was being questioned; and a quarantine against smallpox may be imposed with no hearing whatsoever. The author forcibly demonstrates that even the Administrative Procedure Act with its broad statement of principles and numerous exceptions may, in some situations become unduly binding. His significant achievement is that in spite of this uncertainty and flexibility in the field he has been able to enunciate the competing considerations faced by the courts in enforcing legal limitations on procedures, to suggest the relative weights given those considerations, and to thereby construct from the hodge-podge of decisions a reasonably intelligible body of law.

The second distinguishing feature of this book is that it is not purely descriptive, but attempts to present a critical evaluation of both administrative procedures and judicial control. The author accepts government by administrative agencies as inevitable, but he does not hesitate to condemn the tendency on the part of some agencies to take unnecessary procedural short-cuts, or to urge that some should climb out of their timeworn ruts and develop more adequate procedures. He also criticizes the courts for their frequent unsteadiness in being either blindly intolerant or dangerously indulgent of administrative agencies, and for their failure to state honestly and clearly the real basis for their decisions.

The book is marred only by a certain unevenness of approach. Most of the chapters were first published as separate law review articles over a period of eight years. Although the author has brought the material up to date, he has not made the major revisions which would be necessary to make the chapters fit smoothly together. For example, the chapter on rule-making presents a critical analysis of the procedures used by various agencies, with the emphasis on the wisdom of those procedures. The succeeding chapter on adjudication procedures presents a bare statement of the minimum standards enforced by the court. This shift in the level of approach gives an appearance of tacit approval to questionable practices tolerated by the Courts.

Many of the author's conclusions are, of course, highly debatable. His analysis of some problems is not as thorough and clarifying as one might wish. He does not attempt to grapple with some of the underlying questions of administrative law such as what special qualifications do courts have which justify them in asserting the power to supervise administrative action, and to what extent should procedures be designed to protect individuals against the mere possibility of arbitrary action even at the expense of agency effectiveness. However, these are almost inescapable limitations in this kind of a work, and in no way detract from the real contribution which Professor Davis has made in presenting a systematic and enlightening study of an otherwise chaotic and obscure field.

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