

PUBLIC LAW  
AND  
PUBLIC  
ADMINISTRATION

Second Edition

Phillip J. Cooper

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Second Edition

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# PUBLIC LAW AND PUBLIC ADMINISTRATION

**PHILLIP J. COOPER**

*State University of New York at Albany*



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PUBLIC LAW  
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ADMINISTRATION

**To my wife Lynn**

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# PREFACE TO THE SECOND EDITION

It is amazing how eventful a few years can be. On the one hand, the major themes considered in the first edition of this text remain important. It is essential to develop an awareness of the role administrative law plays in supporting the legitimacy of public administration. It is critical that administrators understand that administrative law is not merely a set of constraints but also a collection of tools which can be used to do the people's business more fairly, effectively, and perhaps even more efficiently. The difficulties of establishing and maintaining useful working relationships among administrators and judges remain. The goal is to find useful ways to integrate the requirements of law, the realities of politics, and good management practice.

Despite the continuity of these questions, some very important changes have occurred, ranging from rulings rejecting the legislative veto to the advent of new presidential directives governing rulemaking. This second edition of *Public Law and Public Administration* incorporates these developments.

There was one particularly large deficiency in the first volume, the absence of a chapter on administrative responsibility. Chapter 13 of this edition responds to that need. The form of that discussion is somewhat different from other chapters. It places a great deal more emphasis on the development of the case law on liability and immunity in order to assist the participants in the contemporary debate over this difficult subject.

The second edition is also accompanied by an instructor's guide that provides discussion topics, suggested readings, and other supporting material. Those who prefer a case approach to administrative law may select from the leading cases identified in the instructor's guide and the text for class assignment.

My appreciation goes as well to the editorial and production staff at Prentice Hall, including editor Karen Horton, and production editor Cyndy Lyle Rymer. Thanks to Nelson Simon for his editing skills.

Finally, the contributions of Ms. Lucy Cheely in typing the manuscript can really be appreciated only by those who have had the pleasure of working with a truly professional typist. Her assistance is gratefully acknowledged.

P.J.C.

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# PREFACE

Many books on law and courts begin with Alexis de Tocqueville's familiar observation that almost all important political problems in America sooner or later are recast as legal problems. But if Tocqueville had visited this country in the second half of the twentieth century rather than early in the nineteenth, he might have changed the observation to something like: "Sooner or later most important political problems in America are transformed into administrative problems which, in turn, find their way into the courts." In our country, there is a complex, ongoing interaction between matters legal and administrative. This book is about that interaction. It is a book about administrative law, but it is administrative law broadly defined. Its premise is that administrative law problems are not merely legal but are also administrative and political.

*Public Law and Public Administration* is not intended as a law school primary text, though it might be used in that manner with appropriate cases or case book supplements. I wrote this book with the following readers in mind. First, it is specifically aimed at those who plan to enter government service and those engaged in mid-career education for public administration. Second, it is written for those who must deal with administrative agencies as consumers of administrative decisions. It is partly intended for law students or lawyers who wish to place their formal study of administrative procedure in administrative and political context. Finally, it is written for scholars of law and administration with the hope that this volume will raise new issues, frame some important existing debates in a new way, and suggest alternative conceptualizations of long-standing problems.

Two primary factors motivated me to prepare this volume. The first was that I could not find a book for my public law and public administration classes



that students could understand and would read with interest. Also, the book is a product of ongoing studies of the relationships among law, politics, and administration—relationships that have not been adequately described or understood. If students and teachers find it useful and others are prompted to further explore the themes that this work only introduces, it will have served its purposes.

As with any book of this type, the most difficult decisions were what to omit. However, I have made an effort to supply thorough and extensive footnotes, bibliographies, and case references to help readers better understand the interpretations I have made here and to take the issues beyond the point where I have necessarily left them in this work. One of the basic decisions on content was that a full-length case study from the initial dispute to the Supreme Court would be more useful than several reproduced judicial opinions. The *Mathews v. Eldridge* case study is the result.

A point or two on organization is in order. The material in the appendices was designed to be used and not merely to serve as a general reference collection. For that reason, I developed selected references in law and administration at state and local as well as national levels. The case study was made an appendix because it can be used in a variety of ways—as introductory reading, as a second reading assignment following something like Fritschler's *Smoking and Politics*, in connection with the adjudications chapter, or as a capstone case study. Finally, Chapter 2, "The Law in Books," may seem a break in flow to teachers or others with an extensive legal process or research background, but I have found that, for students new to judicial process and research, it works well in its present position. Those using the book may of course elect to alter that position through their assignment schedules.

Many people have provided invaluable assistance in the development of this book. Some years ago, Professors Michael O. Sawyer, Dwight Waldo, John Clarke Adams, and Spencer Parratt encouraged my work in the area of law and administration and suggested the need for books like the present project. I would like to acknowledge a number of colleagues who have graciously read and commented on portions of the manuscript: F. Glenn Abney of Georgia State University; Howard Ball of the University of Utah; Richard Campbell of the University of Georgia; Stephen R. Chitwood of George Washington University; Donald Fairchild of Georgia State University; A. Lee Fritschler of the Brookings Institution; Ron Hoskins of Institute of Government of the University of Georgia; Thomas Lauth, University of Georgia; Lloyd Nigro of Georgia State University; Christopher Pollitt of England's Open University; William Richardson of Georgia State University; and John A. Rohr of Virginia Polytechnic Institute and State University. Their help and encouragement are sincerely appreciated. Of course, I alone am responsible for any errors of fact or interpretation.

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