

Principles of Administrative Law

D.C.M. YARDLEY



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D C M Yardley LLB (BIRM), MA, D Phil (OXON)

of Gray's Inn, Barrister

Professor of Law in the University College
at Buckingham

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To our dear cats, who performed a service once similarly memorialised by P G Wodehouse. Their constant assistance at the typewriter when I was drafting the chapters of this book was always welcome, though it did not necessarily advance the date of completing the work.

Preface

Students of administrative law are on the whole fairly well served these days by textbooks and monographs. As the subject has grown apace, so the writers have provided works of learning and criticism which have kept abreast of the developments in Parliament and the courts, and have provided reliable pointers to those who seek to master the intricacies of the law and its practice. Yet the fact remains that students still find it difficult to grasp the subject as an entity. The confusion between statutory instruments and other types of subordinate legislation remains; there is still a tendency to muddle administrative tribunals with administration, and ministerial exercise of legislative power with that of executive power; and the plethora of remedies that have been available has been a constant source of despair, particularly because of the undue emphasis that has always been placed in this area of law upon procedural rules.

The difficulties found with the subject have stemmed mainly from three causes. First, most of the law on the central topic of judicial review is judge-made, though often involving statutory interpretation, and the record of the judges in this area has not been good on the score of consistency. There have been far too many contradictory decisions, with the result that the law has often appeared untidy and unclear. Secondly, because administrative law is essentially a type of applied constitutional law, all the textbooks on constitutional law must for completeness include a section on administrative law. Accordingly students may become confused as to whether the subject is really part of a first-year course, and intended to be fairly elementary, or a more advanced subject in its own right. And thirdly, the subject is circular, in the sense that it is impossible for a teacher or author to introduce it by clear and separate stages. In writing on the law of contract, by contrast, it is possible and sensible to proceed by expounding in turn the readily recognised topics of offer and acceptance, consideration, mistake, breach of contract, and so on – all distinct, and each building

upon those topics already covered. But in administrative law it is impossible to proceed in such a fashion. One cannot deal with delegated legislation without also dealing in part with the *ultra vires* principle; and it is impossible to deal with *ultra vires* (or any other ground for judicial review) without mentioning the remedies available, as well as the power of judicial review over inferior tribunals or inquiries. There are countless examples which might be given of this essentially interwoven character of administrative law. The result is that any teacher in or writer on this subject is faced with constantly having to mention such topics as natural justice, remedies, tribunals and public corporations, while also saying that he will deal with them more fully later. The confusion bred by such overlap and repetition inevitably rubs off on the students.

The purpose of this book of essays, therefore, is not to attempt to rival any of the major textbooks or monographs on administrative law, but to provide an overall view of the subject, setting all the parts of administrative law in their proper place and in relation to each other. It aims to stress the main function of administrative law, which is the control of power, and the maintenance of a fair balance between the competing interests of the administration (central government, local government, or specialised agencies) and the citizen. It is hoped that, from the wealth of material that has accumulated in recent years in this rapidly advancing area of law, the work of the more progressive courts and judges can be highlighted, so that the reader is able to cut through the tangle of confused case law and see the true path of coherent doctrine. Some of this century's judges have been adept at leaving on one side the precedents which hinder development, and boldly striking out afresh in the interest of justice, and it is hoped that this book may have been able to emulate their example. In the result these essays do not purport to cover all aspects of administrative law, and certainly not all available precedents. They concentrate upon those topics and principles which appear to me to be of doctrinal importance, and the book has a minimum of footnotes. It is intended that the book should be read at the end of an administrative law course, and that the exposition is sufficiently clear and uncompromising to enable the principles of the subject, and the context of each part of it, to come to the surface of the student's mind, so that he may be the better equipped to face a searching examination.

The approach adopted is based at least in part upon the essays which I included in my earlier work, *A Source Book of English Administrative Law*; and I should also like to express my thanks to the editor and publishers of *The American Journal of Comparative Law* for permission to use in chapter 3 a passage from an article which I first published in those pages. But the major part of this book is quite new,

and in a sense it consists of the accumulation of experience gained in teaching administrative law for nearly thirty years. Finally, however, I should like to express my thanks to Miss Carol Mackenzie, who has cheerfully and accurately typed the fair copy from my own jumbled mixture of typescript and manuscript; and to Butterworths for the co-operation and help I have received from them at all stages in the production of this book.

D C M Y

Buckingham

14 *August* 1981

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