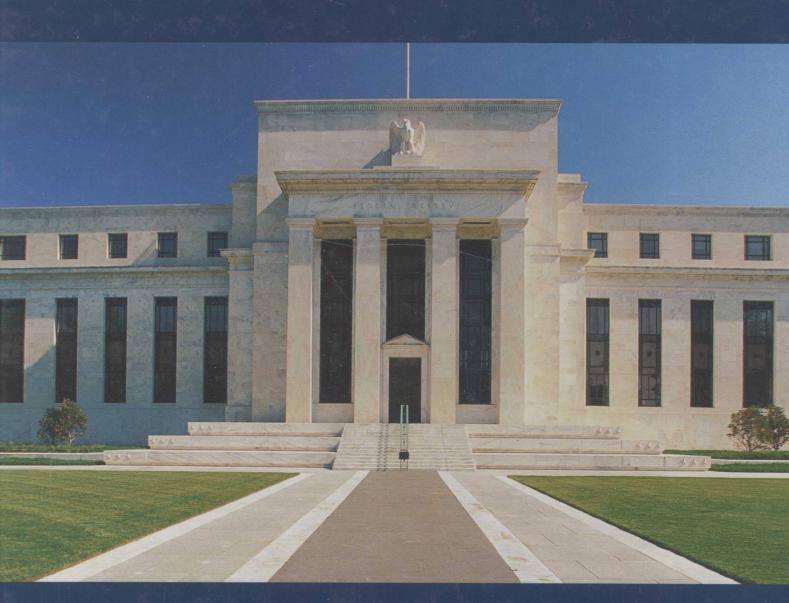
ADMINISTRATIVE LAW

Bureaucracy in a Democracy

FIFTH EDITION



DANIEL E. HALL

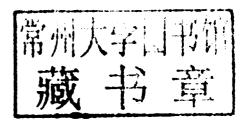
Administrative Law

BUREAUCRACY IN A DEMOCRACY

FIFTH EDITION

Daniel E. Hall, J.D., Ed.D.

Miami University Hamilton



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Administrative Law

Dedication

To Grace Kathryn Hall and Eva Joan Hall, the two most precious children any man could wish to father

Preface

INTRODUCTION

The administrative state, both federal and state, continues to expand. Presidents who are committed to small, limited government have had little impact on the size of the United States bureaucracy. Now, under the leadership of President Barack Obama, the United States is embarking on the largest federal policy program since President Franklin D. Roosevelt championed the creation of social security in 1935, health care reform. Add to this the growth in the federal government resulting from the War on Terror, the increased regulatory activity of the federal government in response to the nation's banking, financial, and accounting industries crises, and the federal government's stimulus activities to re-energize the economy, and the result is a growing federal government, in size and policy reach. The continued growth of agencies and the authorities they possess often stress existing notions of the role of government, federalism, accountability, democracy, and governmental structure. These realities are the best evidence of the need for the study of administrative law and for a book that challenges students to think about the administrative state in logical, critical, and analytical ways. It is imperative for professionals in the field to understand the authorities that administrative agencies processes, how agencies are kept accountable, and the existing, and potential, constitutional and other constraints on agency authority that are exist. It is my hope that this text does this.

The challenge is to remember what the framers feared and to remain stead-fast in preserving what they designed, even in the wake of social, economic, and technological change. This text is devoted to the idea that government is to remain accountable, and that tyranny can be averted by having an informed and engaged population and through a thoughtfully built administrative enterprise. The simple division of power into federal and state and into three branches is no longer realistic, but the principle is the right one, and with some molding it can continue to be an effective structural constraint on agency authority. The reader will learn in this text that most constitutional rules and doctrines that apply to administrative law are intended to keep government accountable.

This text has three objectives:

- 1. Examine administrative law in the context of accountability and the prevention of abuse
- 2. Assist students in critical thinking and case analysis by including case excerpts
- 3. Provide students with some practical knowledge of administrative agencies and the laws that govern their behavior

ORGANIZATION OF TOPICS

Chapter 1 introduces the student to administrative agencies and administrative law. A discussion of the size of the American bureaucracy and how it affects the daily lives of those living in the United States is intended to pique the reader's interest.

Chapter 2 sets the tone for the remainder of the book. It discusses the concept of free government, how the framers of the Constitution intended to protect freedom, and the contemporary challenges administrative law faces today.

Chapter 3 examines agency discretion and provides many practical examples of discretionary agency authority. The idea of abuse of discretion is a segue to Chapter 4's discussion of due process and fairness.

Chapter 4 explores due process and equal protection in the administrative context. Practical problems are discussed, as is the conceptual aspect of protecting against governmental abuses.

Chapter 5 discusses legislative delegations of authority to agencies.

Chapter 6 continues this discussion by examining the delegation of rulemaking power. Delegations to private parties are included, as privatization is becoming increasingly popular. Delegations of criminal law authority are also discussed because there appears to be an increase in the penal authority of many agencies.

Chapter 7 is concerned with agency investigations and data collection. Fourth Amendment search-and-seizure and Fifth Amendment self-incrimination issues are discussed in detail. Drug and AIDS testing are given special attention.

Chapter 8 is devoted to agency adjudications. The right to participate, adjudicatory procedures, administrative law judges' selection and bias, and other concepts are covered. This leads into the discussion of judicial review found in Chapter 9.

Chapter 9 looks at judicial review of agency action. Limiting doctrines, such as exhaustion and primary jurisdiction, are discussed. Standards of review, scope of review, and sources of common law review are also part of this chapter.

Chapter 10, entitled "Accountability through Accessibility," addresses open government. The federal Freedom of Information Act, Privacy Act, Open Meetings Act, Federal Advisory Committee Act, and Trade Secrets Act are detailed.

Chapter 11 looks at a form of judicial review different from that in Chapter 9. This chapter is concerned with the civil liability of governments and government officials in the performance of their duties. This chapter examines both federal and state common law remedies and immunities.

Finally, **Appendix D**, written and contributed by Dr. Deborah Howard of the University of Evansville, provides students with the analytical framework and practical knowledge necessary to research administrative law issues. Dr. Howard has updated this material with more information on Internet and computerized research. Any legal researcher will find this discussion helpful.

TEXT FEATURES

The writing style and language of this book are intended for the undergraduate student in law, justice, or political science or the graduate student in nonlaw fields. When used, legalese is explained.

As mentioned, I have included **case excerpts** throughout the text. Cases were selected on the basis of the following criteria: importance and impact, currency, clarity of writing, and ability to be edited successfully. The book has been written so that the text can stand alone. The cases are used to illustrate or more fully develop ideas that are discussed in the text.

To keep the cases to an appropriate length, considerable text has been excised from most of them. The guiding principle in the editing process was to reduce the size of each case without jeopardizing its legal and educative integrity. Some internal citations have been retained, others removed. In some instances, especially a long string of citations, the removal of a citation is denoted with an ellipsis. In others, the citations have been removed without notation.

Each chapter opens with a set of **learning objectives** that are sequentially designed around Bloom's taxonomy.

Many **illustrations**, **graphs**, and **figures** are used to assist students in conceptualizing the subjects discussed. These include conceptual mapping diagrams as well as data charts.

Sidebars on topics related to the discussion in the text have been included to increase student interest in the subject.

Legal terms appear in boldface in the text and are defined in the margins.

At the close of each chapter, a legal Web site is featured in **Lawlinks.** In addition, a list of Web sites can be found in Appendix D.

Review questions and **review problems** can be found at the close of each chapter. Review questions are designed to test the reader's retention of the content of the chapter. The review problems are designed to test the reader's ability to apply the concepts of the chapter to a set of facts or to engage in critical analysis.

Appendices include excerpts from the federal Constitution, the Administrative Procedure Act, selected presidential executive orders, and an appendix describing how to perform administrative law research.

CHANGES IN THE FIFTH EDITION

It is difficult for me to believe that this text is in its fifth edition, representing more than fifteen years of publication. I am honored that so many instructors continue to rely on this text to assist their students in learning this subject. It has changed over time, in part due to the comments and suggestions of reviewers, adopters, and students. Please, share your content suggestions and please don't hesitate to point out typographical and other errors with me at the email address below.

I don't believe in fixing things that are not broken. Accordingly, as true in prior revisions, the basic architecture of this book has not been changed. The reviewers made outstanding suggestions that I incorporated nearly in toto. These included excellent content additions and legal elaborations, better placement of cases and figures, typographical errors and corrections, and harmonizing discrepancies between previous editions.

At the time of the writing of this edition, summer 2010, the full import of the health care reform law was yet to be realized. Trumpeted as the largest federal social service initiative since the creation of social security during the New Deal, it will undoubtedly result in many challenges to its very existence and there will be even more when the various programs begin to be implemented. Indeed, the litigation has already begun. On the day the health care bill was signed by President Barack Obama, several states, as well as individuals, challenged its constitutionality in federal Court. Subsequent to this initial litigation, assuming the reform is found constitutional, a large administrative infrastructure will be created, spawning additional litigation, and then, like the social security system, a system to hear and resolve disputes both administratively and judicially will be developed. Although it is too early to fully discuss these issues, three sidebars have been included that identify the constitutional challenges that will be addressed in the upcoming years.

Of course, the law has been updated through 2010 and indeed, the Supreme Court of the United States issued several decisions concerning preemption, official and sovereign immunity, Bivens actions, standing, and the commerce clause since the last edition. Five new cases have been added and one removed. *Motor Vehicles v. State Farm* was removed and replaced with *F.C.C. v. Fox* in Chapter Nine, a more timely and interesting example of the application of the arbitrary and capricious standard to agency rulemaking. This edition contains new photos and graphics as well, reinforcing the content and making the subject more visually interesting.

I hope this text assists you in teaching or learning this subject. Your comments or questions are welcomed. Please direct these to either Prentice Hall editors or me.

Daniel E. Hall

Please share your comments with me at hallslaw@yahoo.com.

INSTRUCTOR SUPPLEMENTS

An Instructor's Manual, PowerPoint Lecture Package, and Test Generator are available for download from the Instructor's Resource Center. To access supplementary materials online, instructors need to request an instructor access code. Go to www.pearsonhighered.com/irc, where you can register for an instructor access code. Within 48 hours of registering you will receive a confirming e-mail including an instructor access code. Once you have received your code, locate your text in the online catalog and click on the Instructor Resources button on the left side of the catalog product page. Select a supplement and a log-in page will appear. Once you have logged in, you can access instructor material for all Prentice Hall textbooks.

COMPANION WEB SITE

A companion Web site accompanies this textbook, containing chapter summaries, chapter objectives, links to Internet resources, and practice tests. Go to www.pearsonhighered.com/hall.

Acknowledgments

I again thank Professor Deborah Howard of the University of Evansville for her researching administrative law appendix. I have heard that instructors and students appreciate this well-written, practical guide. The reviewers for this edition made valuable suggestions. To them, I extend many thanks:

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G. Coleman Lee, McNeese State University; and

Kathleen M. Simon, Ph.D., Appalachian State University.

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About the Author

Daniel E. Hall, a native of Indiana, earned his bachelor's degree at Indiana University, Juris Doctor at Washburn University, and Doctor of Education (higher education curriculum and instruction) at the University of Central Florida. Before joining the academy full time, he practiced law in both the United States and the Federated States of Micronesia (FSM), where he clerked for the Supreme Court of the FSM and served as Assistant Attorney General of the FSM. He also clerked for Gene E. Brooks, Chief Judge, United States District Court for the Southern District of Indiana and interned for Congressman Frank McCloskey and Robert Katzmann, J.D., Ph.D., at the Brookings Institution. Subsequent to leaving law practice he has been on the faculties of the Department of Criminal Justice and Legal Studies at the University of Central Florida and the Department of Criminal Justice at the University of Toledo, where he was chair and associate professor. He has also taught as adjunct instructor at the University of Evansville, College of Micronesia, and Barry University School of Law.

Daniel was Campus Dean of Miami Hamilton from 2003–2010 where he was, and continues to be, professor of political science and criminal justice. He is also visiting professor of law at Sun Yat-sen University School of Law from 2010–2013. Daniel is the author or co-author of eighteen textbooks (first and subsequent editions) and more than a dozen journal articles on public law and related subjects. Daniel's greatest joy is being father to Grace and Eva, ages 9 and 5 at the time of publication, who, in spite of continuous efforts by their father, have not yet acquired an appreciation for the constitutional aspects of the modern administrative state. They live in Ohio. For more information on the author go to www.danielhall.org/. He may be reached at hallslaw@yahoo.com.

Administrative Law

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