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The Literature of Administrative Law and the New Davis Treatise

Frank C. Newman*

Assume that Clifford Witter, dancing teacher, waltzes out of the Arthur Murray Studios into employment by the Fred Astaire Studios. Assume too that Arthur Murray, wisely anticipant, has had a string tied to Witter in the form of a contract proscribing such competition. Should a court of equity "pull that string and yank Witter out of Fred Astarie's pedagogical pavilion"? Judge Earl Hoover of Ohio, facing that issue some years ago, pronounced "No"—and then told us why in an unusually lengthy trial opinion.¹ The opinion has always intrigued me because of the judge's introductory paragraph. He says:

This is not one of those questions on which the legal researcher cannot find enough to quench his thirst. To the contrary there is so much authority it drowns him. It is a sea—vast and vacillating, overlapping and bewildering. One can fish out of it any kind of strange support for anything, if he lives so long. This deep and unsettled sea pertaining to an employee's covenant not to compete with his employer after termination of employment is really Seven Seas; and now that the court has sailed them, perhaps it should record those seas so that the next weary traveler may be saved the terrifying time it takes just to find it.²

The Seven Seas are (1) the "periodical sea," (2) the "sea of annotations," (3) the "sea of encyclopedias," (4) the "sea of treatises," (5) the "restatement sea," (6) the "digest sea," and (7) "Ohio's own Sea." The massive citations that Judge Hoover records are most impressive, and the next traveler no doubt is pleased when he finds them. I wonder, though: Having found them is he much less terrified? (My students in Equity each year, unhappily forced to read the opinion, tend to become perplexed and overwhelmed.) Then I wonder more: If that kind of minute problem in equity, or contracts, or torts frightens us, because analyses and descriptions of it have become so massive, how ever can we confidently face the full range of problems in administrative law? For if employees' covenants not to compete float on seven seas, how much more do

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2. Id. at 687.
administrative law problems orbit in Outer Space, thus perhaps in Infinity?

The literature of administrative law is monstrous, cavernous, gargoyloid, unconfined and vagrant. It comprehends most official adjudicating, most law making, most governing in general. Its raw materials (including mountains of documentary material) bulk larger than those of any other "law subject." It includes practice and theory, report and speculation, diatribe and reform.

Now, in Professor Davis's magnificent, four-volume Administrative Law Treatise, the subject is packaged more informatively than ever before. To his energy and scholarship my first aim here is to pay tribute. Practitioners, teachers, and others should indeed be grateful for his creative contribution to the vast topic.

Yet this must be stressed: In most situations that call for skill and wisdom in administrative law tasks, no lawyer, scholar, teacher, or reformer, no legislator, administrator, or judge, from the Treatise alone, will fit himself adequately for his assignment. The book contains by far our most practically useful survey of the materials of administrative law; nonetheless it stands incomplete. To illustrate:

(1) Though highly valuable chapters deal with topics such as adjudication procedure, examiners, institutional decisions, evidence, and official notice, this is not a book that tells lawyers how to practice before agencies. Further, most of the manuals and other writings that have been specifically designed to aid that practice are not even cited.

3. Professor Davis states that "The quantity of adjudication by agencies probably exceeds the quantity of adjudication by courts, and the annual output of administrative rules is probably larger than the annual output of statutes." Preface to Davis, Administrative Law Treatise at iii (1958). (Emphasis added.) I would have substituted the word "obviously" for the word "probably."


It is unfortunate, I think, that Davis decided not to include names of particular agencies in his index. Compare the following section headings:

SEC Supervision of Registration and Acceleration.

FTC Supervision through Stipulations and Consent Orders.
(2) Though this book contains more "state administrative law" than ever before has been collated, the total by no means serves even as a beginning for a "restatement" of that law; reasonably thorough coverage has been attempted only for selected topics; and most of the leading guides to administrative law in particular states are not cited.

(3) Though the Davis handling of United States Supreme Court and Courts of Appeals cases is the most comprehensive we have yet witnessed, district court and federal agency reports are minimized. Readers who wish to learn of new developments or follow-up developments at the trial level will still have to do their own library work. When I checked volume 6 of the 1957 Pike and Fisher Administrative Law 2d, for instance, I found a total of seventy-two district court level cases plus 119 cases from the Departments of Agriculture and the Interior, the CAB, FCC, FPC, FTC, ICC, NLRB, SEC, OAP, AEC, FMB, CSC, the Coal Mine Safety Board of Review, and the Board of Immigration Appeals. Of these, only thirteen of the district court and only three agency cases could be found in the "Table of Cases" of the Treatise.

(4) Though on occasion Professor Davis perceptively treats the-

FCC Supervision of Radio and TV Programs.
Amendment of NLRB Charges.
The Taft-Hartley Act on Consultation.
Communications Act Amendments, 1952 [on Consultation].
The Immigration Act of 1952 [on Consultation].
The Immigration Act of 1955 [on Consultation].
Aliens [and the Right to be Heard].
Passports [and the Right to be Heard].

See also §§ 19.02–06, dealing with primary jurisdiction law and ICC, NLRB, antitrust, and Railway Labor Act cases. Forms relating to CAB, FCC, FPC, FTC, ICC, NLRB, and federal judicial review proceedings appear at 4 Davis 271–395. Cf. 2 Davis § 14.07.

5. Chapter 24 is entitled "State Forms of Proceeding for Review." Other discussions of state law are identified by section headings in chs. 2, 6–7, 9, 11, 14–15, 17, 19–51, and 28 [section and chapter references are to Davis, op. cit. supra note 3 when not otherwise indicated]. The headings show that the coverage is sometimes as broad as the chapter’s discussion of federal law, e.g., "State Court Decisions on Subdelegation," ch. 9; sometimes much narrower, e.g., § 11.04.

ories of governmental organization and like concerns of political science, the book contains no reference to the works of Dwight Waldo, David Truman, Herbert Simon, Harold Lasswell, Leonard White, John Gaus, John Millet, Glendon Schubert, Fritz Morstein Marx, Earl Latham, and many other scholars whose concerns that overlap his concerns are surely identifiable.

Do those kinds of omission indicate that the book is faulty? Or that Professor Davis did not do all his homework? Or that a demand for supplemental writings will soon inspire a more complete, competitive treatise? Obviously not. The book as it stands is wonderfully comprehensive. The finding and collecting chores that Professor Davis has discharged are staggering. His catalogs of the unsolved problems are nonpareil. His contributions to the solving of those problems are countless, conscientious, often brilliant. And at the end of this review I shall propose some future writing I believe would be much more useful than competitive tomes which are still unwritten. With respect particularly to uncited cases, would a better treatise carry a guarantee that all published opinions have been checked for enlightenment? No, for even if there were enough years to write such a book, analysis and critique in it would inevitably be sacrificed. Today the “sea of cases” defies complete exploration, and we should concede our impotence to chart it.

I. THE NEW DAVIS

Thousands of readers know Professor Davis’s 1951 text and his varied periodical writings. Among those readers many may wonder how now to approach the 2500 page Treatise. I hardly suggest it for after-dinner reading, though his style remains crisp, colorful, provocative. For whoever wish a complete survey (to see if their own ideas, say, have kept pace), I recommend:

1. a splitting of the whole into these divisions: Introduction; procedure; and Judicial Review; and
2. within each division, a careful study of the list of section headings that introduces each chapter, and then a reading of the last section of each chapter.

The last sections vary in aim but together, I think, fairly portray the author and his work. Kenneth Culp Davis has a reputation not

8. 1 Davis chs. 1–2.
9. Id. chs. 3–18.
10. Id. chs. 19–30.
based on scholarship alone. I do not know whether the 1942 fight with Roscoe Pound was his first famous controversy, but he has been a noted participant in many administrative law battles. There may be readers who, because of those battles and because of reservations they had as to his arguments, his citations, his vigor, or his etiquette, have built in their minds an image of probable Davis views—just as we anticipate how *Time*, *The Wall Street Journal*, or *The Nation* will respond to public events. Let me say this: Those readers will be disappointed who in this treatise expect to detect biases assumed by such phrases as pro-government, pro-New Deal, anti-business, anti-American Bar, pro- or anti-Supreme Court, civil libertarian or Ivory Tower. Professor Davis's hard-headed, driving philosophy is uniquely his own; and I do not attempt to paraphrase it here. That it is a flexible philosophy, tailored to data that become available to him, is shown in part by several contrasts between the *Treatise* and the 1951 text.

To illustrate: In the 1951 text “The Rule of Necessity” (requiring a biased adjudicator nonetheless to hear a case) was treated as a patently needed rule. In the *Treatise* we are reminded, with persuasive discussion, that “The easy and seemingly automatic application of the rule of necessity is more dangerous than is recognized in typical judicial opinions, for grave injustice may result from allowing disqualified officers to adjudicate cases.” Similarly, in the text his defense of intra-agency consultation makes no mention of dangers relating to the use of extra-record facts. The *Treatise*, on the other hand, states that “we must carefully distinguish between extra-record ideas and extra-record facts.”

One change in the Davis philosophy that I regret is mirrored in the preface of the *Treatise*. Davis states: “Although administrative law comes from many sources, the principal law maker is and will continue to be the Supreme Court of the United States.” Further, “Administrative law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action.” One can readily approve his focus on “powers and procedures” (notwithstanding the resulting omission of what Mr. Westwood labels “substantive ad-

13. 2 *Davis* § 12.04, at 164.
15. 2 *Davis* § 11.11, at 91.
16. Preface to *Davis* at iv.
17. This is the first sentence of the body of the *Treatise*. 1 *Davis* ch. 1, at 1. (Emphasis added.)
ministrative law," but the new stress on review and on the Supreme Court’s rarified handling of review seems to me unfortunate. If we must identify “the principal law maker,” then it is the Congress of the United States, which in scores of statutes (of which the Administrative Procedure Act is merely the broadest) prescribes for administrators the details of power and procedure that govern most matters. In his text, Professor Davis more moderately claimed that “the great bulk [of administrative law] . . . is created by courts.” Even that, I submit, was misleading. The great bulk of administrative law is created not by courts but by administrators, via rules and adjudicative orders and opinions that relate to power and procedure.

Agency rule makers and adjudicators do pay considerable attention to statutes, but if Professor Davis believes they are regularly influenced by Supreme Court opinions I believe he is mistaken. My contention could be documented, I think, with statistics on how infrequently, in practice, crucial reference has been made by administrators to *Pike & Fisher*, say, or to pages 595–956 of the *Fifth Decennial Digest*, or to the pocket-part *Administrative Law* summaries in the *Supreme Court Digest*, or to *Davis on Administrative Law*.

That default does not, of course, characterize the government and private lawyers who have written briefs aimed at persuading judges. But the contribution of those lawyers and judges, however crucial, has never been “principal” or “bulkiest.” The statute writers, the rule-writers, and the agency-opinion-writers are the law men who merit those two adjectives; and though most of those writers are familiar perhaps with such cases as the four Morgans and the two *Chenerys*.* I speculate that their activities in general are little affected by Supreme Court holdings.

True, the Court’s holdings do have great impact on judicial review, where the initial questions relate to court powers and procedures not agency powers and procedures.* But why again does a

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18. 43 MINN. L. Rev. at 607–10.
20. Davis, op. cit. supra note 12, at 2; see 1 DAVIS § 1.01, at 4.
23. It is interesting to note that in the widely distributed preface, where Davis strongly criticizes the 1938–1958 Supreme Court, every case he cites but one relates to court powers more than to agency powers. The one case, *Fahey v. Malonee*, 332 U.S. 245 (1947), involves the allegedly understandable confusion of a trial judge regarding standards required for delegations of legislative power. My feeling is that if that judge really was misled by Court pronouncements, either the case before
noted author force us to remind his readers that people, as distinguished from judges, are normally not affected much by those initial questions? People are most affected by what administrators do, not what judges do. We may not know yet how most usefully to discuss it, but I deny that “the great bulk of administrative law that is worth discussing is, from a realistic standpoint, judge made law.”

II. THE TREATISE AND "THE LAW"

That Professor Davis originally approached The Law with humility is shown in the 1951 text:

Possibly no other major field of law has been for so long so much in need of systematic statement of principles. That need continues. This book cannot purport to satisfy it. The field is still so unruly that one is sufficiently ambitious who attempts to dig out and to organize the problems, to present such law as is susceptible of summary, to discuss pros and cons, and to contribute here and there to solutions. The search for sound principle has frequently failed. Even when that search has seemed to meet some measure of success, the suggested answers are usually presented with diffidence and doubt.

That continued work has kept him humble is shown by parallel excerpts from the Treatise:

The huge mass of administrative law that has sprung up in recent decades is seriously in need of systematic statement of principles. This treatise may partially satisfy the need, but not more than partially. Even though each chapter attempts to collect, classify, and summarize the law, many chapters achieve something less than a systematic statement of principles...

Even though we have had a federal administrative process since 1789, current problems in modern contexts are characteristically largely new and largely fluid. Whether the thinking stems from judges or from administrators, legislators, pressure groups, study groups, or scholarly commentators, it usually has many or most of the earmarks of the early stages of thinking about any problem. When this is so, a treatise is mostly

him was badly briefed or he did not conscientiously consider the governing precedents.

The following excerpt from a letter written to me by Professor Davis in September may be of interest:

[One point] on which we differ is whether the Supreme Court is the principal law maker in the field. If it isn’t, then the whole treatise is unsound, as are all the casebooks, without exception, and nearly all the literature, including even articles by . . . Frank Newman. All the courses that I know about regard the Supreme Court as the principal law maker. I know, at one time I shared in the then prevalent reaction that we had to get more to the administrative process itself and away from the courts’ version of it, but as time has gone on I’ve realized more and more that what the practitioner needs is guidance about the framework developed by courts. If administrative law is the law about powers and procedures, as I deem it to be, it is mostly judge-made.

24. 1 Davis § 1.01, at 5 n.8. (Emphasis added.)
25. Preface to Davis, op. cit. supra note 12, at iii.
restricted to digging out and organizing the problems, presenting such law as is susceptible of summary, discussing pros and cons, and attempting to make contributions to the solution of the problems of law making.

A systematic statement of principles often must await a good deal more interaction of imagination and experience, a longer period of case-to-case development, more evolution through trial-and-error methods. Satisfactory principles to govern intricate problems can seldom be struck off fullblown; they have to grow over a period of time. ... 26

My own belief is that the “period of time” will be hopelessly long if we must await case-to-case development and the kind of “evolution through trial-and-error methods” to which we have become accustomed. Even if the Supreme Court Justices were to adopt Professor Davis’s five suggestions for their self-improvement, 27 I would not agree that administrative law could best be developed, over-all, by “a focus upon particular problems as they arise in particular contexts, with the full benefit of the adversary system—briefs and arguments of counsel directed to crystallized, narrow issues.” 28

What he underemphasizes, in my opinion, is the essential role of statutes in administrative law reform. There are good reasons for concluding that the bulk of judicial review law can best be reformed by judges. But law relating to agency powers and procedures is quite different, for judges inevitably can deal only with tiny pieces of it. If bureaucrats universally, or even typically, were men of the needed training, experience, vision, and good will, perhaps they could carry the burden of procedure reform and power adjustment; but history surely proves that the job cannot be left to them. The aid of legislatures must be sought, to improve the work of both agencies as a group and individual agencies.

Professor Clark Byse recently gave some excellent advice to reformers in India, as follows:

[T]he lesson to be drawn from the American experience with administrative procedure acts . . . is this: there is no easy or royal road to intelligent reform in this important and complicated area of modern government. Adoption of reform measures must be preceded by careful, patient, detailed research. When investigation discloses weaknesses, measures carefully tailored to meet the problem should be proposed. Affected agencies and private interests should be given an opportunity to study and comment on the proposal before it is finally adopted. This method of patiently pursuing facts and preparing remedial measures in light of the specific evil disclosed is costly, slow and unspectacular. Yet it is clear to me that only through such rational processes will meaningful and lasting reforms be achieved. 29

27. Id. at v–x.
28. Id. at iv.
True, but is it unfair to suggest that too many scholars and government lawyers, both after and prior to 1946 (when the APA was enacted), have themselves anticipated and endorsed Professor Davis's willingness to accept the Supreme Court as Big Brother? Have they not seemed more conscientious in their Court critiques and their attacks on others' nonjudicial reform proposals than in their own proposals for reform? Professor Byse correctly notes that we need careful, patient, and detailed research, and that reform measures must be "carefully tailored." But is there sufficient evidence that disinterested observers are profiting much from careful, patient, and detailed research reports that are already extant? As examples of studies that too soon have gathered too much dust I cite part VI of the Hoover Commission's report,30 and the 2094-page responses to questionnaires31 published by the House Committee on Government Operations in connection with its study of organization, practice and procedure in federal administrative agencies.32

Many writers have pleasurably noted Justice Brandeis' comment that "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."33 Unfortunately, in administrative law those state experiments seem to have had minimal impact. More unfortunately, we have failed within governments, particularly within the federal government, to exploit all we could learn from the experiments of courageous and imaginative agencies. The inertia of other agencies, unless prodded specifically or generally by the legislature, is indeed remarkable.34

III. The Job Ahead

The publication of the Davis Treatise is a notable event in Administrative Law history. For the sake of long-range goals, I wish we could mark it by a few rules of thumb like these;

31. HOUSE COMM. ON GOVERNMENT OPERATIONS, 85TH CONG., 1ST SESS., SURVEY AND STUDY OF ADMINISTRATIVE ORGANIZATION, PROCEDURE, AND PRACTICE IN THE FEDERAL AGENCIES (Comm. Print 1957).
34. To illustrate: Why, ten years after a general law on rule making has been enacted, is it necessary for the legislature to remind agencies that, though emergency
(1) Administrative law writers should have good reasons when they fail to cite the Treatise.

Brief-writers gradually learn that it is wise to cite the authority, and agency and judicial opinion-writers tend to acknowledge their debts and differences of view. But I continue to be surprised when I see so many legal writings where the author, impliedly, would have readers believe that the issues he treats have not already been the subject of reputable analysis. In the three most recent annual surveys of the Supreme Court by the Harvard Law Review, for example, all these topics were discussed without even a courtesy reference to either the Davis text or the Davis periodical writings that preceded his Treatise:

- Administrative Procedure Act
- Doctrine of primary jurisdiction
- Governmental functions and the Tort Claims Act
- Retroactive revocation of tax exemption
- Right to counsel in state administrative investigation
- Suspension of deportation
- Supervision of undeportable aliens
- Right to travel
- Federal employee security program

Similarly, the last two bound volumes of the Harvard Law Review disclose these "non-Davised" notes and comments:

- FTC has power to issue subpoenas
- Dismissal of students: "due process"
- Federal court lacks jurisdiction of antitrust action brought by United States to revoke license granted by FCC
- Court will review agency’s refusal to act even though statute makes agency act ineffective without presidential approval
- [Primary] jurisdiction over [air-carrier] tariff provisions
- Combination of judicial and nonjudicial functions in one body violates Australian constitutional doctrine of separation of powers

Ought we not query the publication of a remarkable series of five Harvard articles on judicial review, with 727 footnotes, where the Davis writings are referenced only nine times? And in a 112-page survey of "Remedies Against the United States and Its Officials,"


should the Davis articles on “Unreviewable Administrative Action,”36 “Tort Liability of Governmental Units,”37 and “Administrative Officers’ Tort Liability”38 have been ignored?39 Nor is Harvard by any means atypical. For instance see An Introduction to American Administrative Law,40 where the author does cite the 1951 text but mentions not one of the fifteen or so excellent articles that Professor Davis published during the period 1954–1957.

I do not suggest that the Treatise should always be cited—only that there be good reason for not citing it. For many years that was the rule, usually honored, for the 1941 Attorney General’s Committee report.41 That report has become dated, but we now have a Wigmore on Evidence for Administrative Law. Rightly, there will be dispute regarding the Davis conclusions. But the fact that he, our most comprehensive scholar, has or has not reached a conclusion is itself surely worthy of note.42

(2) Administrative law reformers should have good reasons when they fail to read or re-read the Treatise.

For certain controversies the battlegrounds are so strewn with arguments that contestants are easily excused from a duty to arm themselves with old authority. “Administrative court” controversies perhaps fit in that category.43

37. 40 MINN. L. REV. 751 (1956).
38. 55 MICH. L. REV. 201 (1956).
41. ATT’Y GEN. COMM., REPORT ON ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES (1941).
42. Please do not infer that the Davis record of citing other authors is exemplary. In the Treatise I can find no reference to the American Administrative Law texts by Carrow, Cooper, Forkosh, Lavery, Parker, Schwartz, Swenson or vom Baur. Among the casebooks, though several are cited, e.g., Frankfurter & Davidson’s second, Freund’s first, Gellhorn’s first, Merrill, Stason’s first, second and third; more are not, e.g., Davis & Grundstein, Gellhorn & Byse, Hart’s first and second, Jaffe, Katz, Sears, McFarland & Vanderbilt’s first and second. Cf. Emerson & Haber, Political and Civil Rights in the United States (2d ed. 1958); Hartz & Wechsler, The Federal Courts and the Federal System (1953); Riesenfeld & Maxwell, Modern Social Legislation (1950); Newman & Surrey, Legislation (1955); and other related casebooks.
I do not know why the Treatise contains no section comparable to § 9 of the text (entitled “Materials, Literature, and Caselinders”). The reader is not even advised as to the regular publication of Pike & Fisher, Administrative Law 2d. Absolutely inexcusable is the failure to comment on Gellhorn, Changing Attitudes Toward the Administrative Process, in Individual Freedom and Governmental Restrictions ch. 1 (1956). I also miss references to specialized texts such as Handler, Antitrust in Perspective (1958) and Loss, Securities Regulations (1951).
43. 1 Davis § 1.04, at 28 n.12, 31 n.28.
There are other controversies, though, where enlightenment might result if the reformers were automatically to check the basic texts. In recent years I have had the chance to watch the development of section 1005(c) of Senate Bill 1070, now before the Congress, which deals with separation-of-functions law under the proposed Code of Federal Administrative Procedure. The progression to that section from section 5(c) of the APA through section 204(c) of the Hoover Task Force statute and Recommendation No. 87 of the Hoover Commission is easy to trace. I do wonder, however, how many of the cognizant revisers ever troubled to look at chapter 10 of the 1951 text. And in February 1959, when the Section of Administrative Law of the American Bar Association decided to include separation-of-functions law in its proposal dealing with influence peddling, I am sure that the cognizant committee members and council members had recently read neither that chapter nor chapter 11 of the Treatise.

We need not endorse the varied reform proposals that Professor Davis has set forth; nor should we consider reverently the objections he makes to proposals of others. Rather, would we not usually profit from an automatic check with the leading author—for background, existing law, and references, as well as ideas?

(3) Administrative law researchers should have good reasons when they choose to re-examine a topic well-treated in the Treatise, instead of giving us guidance on a new topic or a topic not treated adequately.

Is it too much to ask, generally, that we shun further analysis of the Ben Avon doctrine, Crowell v. Benson, and Gray v. Powell? Or that with respect to alien and passport cases, for example, we focus more on reform than on news bulletins regarding the latest appellate pronouncements?

Professor Davis has provided us with jumping off points. He has exposed serious gaps in our learning. Most of us who are interested in administrative law per se (distinguished from labor law, tax law, public utilities law, water law, etc.) will, I suppose, continue

44. S. 1070, 86th Cong., 1st Sess. § 1005(c) (1959).
50. 285 U.S. 22 (1932).
51. 314 U.S. 402 (1941).
our refusal to focus on the woes of particular agencies. We want to remain generalists; and we lack spare hours that are needed to acquire the extra substantive knowledge which must precede reforms in procedures set by the FCC statutes, the CAB rules, or loyalty-security and cemetery board practices.\textsuperscript{52}

As generalists, though, we hardly lack problems. To fill gaps, researchers are needed to help guide us through the newer writings of the behavioral scientists.\textsuperscript{53} Other researchers must give us better bibliographies\textsuperscript{54} and must check back into related fields, examining again parallel law that too quickly we assumed was either wise or distinguishable. The \textit{Treatise} begins such work notably as to evidence and official notice.\textsuperscript{55} And it identifies questions arising from assumptions that the traditions of grand juries and parole officials, say, should govern agency proceedings that appear similar.\textsuperscript{56} Further, some researchers should aim to improve the miserable total product of comparative study in administrative law. We are not yet ready for painstaking comparisons of all United States processes with those of all other nations; but surely we could import some theories, principles, and gimmicks that would be valuable to our governments.\textsuperscript{58}


53. "The areas of study in political science differ significantly in the extent to which they have thus far been subjected to the behaviorist approach. The least ... studied are perhaps public law, jurisprudence, and judicial affairs. . . ." WALDO, \textit{Political Science in the U.S.A.} 23 (1956); cf. WASSERMAN & SILANDER, DECISION-MAKING: AN ANNOTATED BIBLIOGRAPHY (1958); LAZAR, \textit{The Human Sciences and Legal Institutional Development; Role and Reference Group Concepts Related to the Development of the National Railroad Adjustment Board}, 31 Notre Dame Law. 414 (1956); Roche, \textit{Political Science and Science Fiction}, 52 Am. Pol. Sci. Rev. 1026 (1958).

54. Cf. Conn, \textit{Bibliography: Administrative Law and Procedure}, 44 Calif. L. Rev. 378 (1956) (California). The Administrative Law Section of the American Bar Association is now preparing a practitioners manual that is designed to lead its readers to the significant literature regarding all federal agencies.

55. 2 DAVIS §§ 14.01--04.

56. Id. §§ 15.01--14.

57. Id. §§ 7.16, 8.10.

58. Our most ambitious export project, to date, involves India. See the first issue of the \textit{Journal of the Indian Law Institute} (1958). Cf. \textit{Public Law Problems in India} (Ebb ed. 1957). Imports are almost nonexistent, though we do acknowledge that the British too seem to have discovered Administrative Law. See, e.g., 1 DAVIS §§
Most important of all, we need further analyses where Professor Davis has shown us that our work to date is mostly exploratory. To illustrate: Has he not proved that “More harmful than helpful is the proposition . . . that hearings are required for judicial functions but not for legislative functions . . .”9 If that be true, do we not desperately need some learned scrutiny of our mystique regarding “hearing on the record”? And for non-record hearings, how can we longer postpone a full-scale attack on the frequent discrepancies of concern that are starkly exposed by contrasts between section 5 of the APA60 (“adjudication required by statute to be determined on the record after opportunity for agency hearing”), and the sad little third sentence of section 6(a) (all other adjudication)?

In sum, the four volumes that Kenneth Culp Davis has presented to us could be foundation stones for crucial expansion. We witnessed such an expansion after 1941, when practitioners, scholars, and reformers, similarly indebted to one man (Walter Gellhorn), were able to build significantly from a base supplied by his first casework,61 by the report of the Attorney General’s Committee,62 and by that Committee’s excellent series of agency monographs.63 If, eighteen years from now, a new expansion were reflected in writings that contribute then as much as Professor Davis’s Treatise contributes now, to him we should be doubly indebted.

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9. 1 Davis § 7.03, at 415.
61. Gellhorn, Administrative Law, Cases and Comments (1940).