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THE NEW PROBLEM OF ADMINISTRATION

By JOHN M. GAUS*

The problem of administration has changed during the last few decades. It is now more complex and difficult to comprehend. Yet it is essential that we try to understand it in view of the fact that the functions of government have increased, and promise to increase further. The failure of citizens to appreciate the changed nature and essence of administration is in part responsible for some inadequacies in our organization of administration and the way in which the organization is operated; and it is revealed in some measure also in the difficulties which courts, lawyers, and officials exhibit in treating of the question of administrative law. We shall find how administration is changed if we examine briefly what other factors have caused its development. Those factors include our party system, our legislatures, and the problems which confront both.

If by a party we mean a group of citizens who are united in part by some principles of political action and who desire to see those principles put into force by electing members of the party to public office we shall be unable, I think, to admit that most of the present so-called parties are parties at all. They tend to be, rather, coalitions of parties. They avoid adopting definite principles and programs in the hope of holding together the minor groups who have such programs and which would split apart if a common group of principles was stressed. As a consequence the representatives of these coalitions who are elected to the legislatures have the burden of actually framing concrete proposals into law, and only in the broadest sense and at the most infrequent intervals can it be said that the party as we know it to-day really formulates policy.

Unfortunately we do not find the procedure and organization of our legislatures so constituted that responsible leadership is readily apparent. There are two chambers, each with its own procedural and committee systems and leaders. Furthermore, in the United States there is no constitutional relationship with the executive branch of government looking toward a satisfactory solution of the difficult problem of responsibility for policy and

*Assistant Professor of Political Science, University of Minnesota.
action. As a result legislation must be largely a matter of compromise and of give and take. Consequently we find a tendency to leave difficult problems to administrative agencies for solution because of a lack of information on the part of the legislature, because of a lack of executive leadership, or because of the intricacies of the subject.

In fact the type of problem now attacked in our government forces us to devolve greater discretion upon the administrative organization. In a simpler agrarian society functions might be few and not intricate. Today our problems are hardly capable of solution by statute. They are not met by party platforms. In the legislatures there is therefore a recognition of the sheer necessity of establishing a permanent and expert agency which shall apply a general principle which shall be set by the legislature to the specific situations discovered by the officials. The general principle must be interpreted by rules and regulations and by special orders. In this way, presumably, the policy of the legislature is carried out. Actually, the administrative agency itself makes a policy because of the sheer failure of preceding agencies—parties and legislatures—to perform their primary functions.

Nor can one afford to overlook the decline in the public estimation of legislative action. It is not alone in the United States that various groups and many individuals express a sharp criticism or an even more revealing boredom with our legislatures. The same tendency has been revealed in England in assaults on "the servile state," and the "discredited state;" in France by administrative syndicalism and regionalism and the criticism of what is termed "deputantism;" in Italy by the Fascist movement, with its contemptuous dismissal of parliamentary authority by its leader Mussolini; in Germany by the Hitler-Ludendorff attempt at a Fascist movement, by the voting of wide powers to the chancellor, and the movements toward direct action both on the left and the right; while in Russia another phase of the same tendency is seen in the rejection of parliamentary democracy in favor of the dic-

1See Carr, Delegated Legislation, Cambridge University Press; also the debate in the U.S. Senate on the "flexible" provisions of the Tariff Act of 1922 on August 10 and 11, 1922.

2Phrases applied by Hilaire Belloc and Ernest Barker.

3The extensive literature on these developments is conveniently introduced in Mr. H. J. Laski's essay on recent movements in the French civil service in his Authority in the Modern State, Yale University Press.

4Carleton Beals, Rome or Death, The Century Company,—an interesting, if somewhat poorly organized account of the movement.
tatorship of the more aggressive leaders of a group. There are, too, more peaceful expressions of a positive policy of experimenting with new schemes of social representation as represented by the Guild Socialist Movement in England, the Industrial Parliament of reconstruction days, and best of all in the swing of German business and industrial interests and trade union organizations toward the development of the Economic Council and the district and local councils.  

While there have been some interesting experiments in this country in the field of new forms of policy-expressing organizations they have received relatively little attention. Broadly speaking, we have been too concerned with being critical of the extension of governmental regulation or the withdrawal of governmental regulation to apply any fresh and fruitful thinking to the real problem of getting things done. It is significant, however, that under pressure of war needs business was able to turn from fighting further attempts at regulations of the peace time type to the more positive creative efforts to do its own organizing on a national scale in order to formulate its own policies and work with the government departments on mutual problems. The largest experiments in this field were undertaken by and through the Council of National Defense and the War Industries Board, and are fortunately recorded for the public in Grosvenor Clarkson's interesting Industrial America in the World War. Much less known are the most interesting experiments made by the War Labor Policies Board to secure the development of a representative council in certain of the great industries, which councils would speak for their industries in all matters of labor policy. If the energy which people representing various interests put into negative criticism and fault finding could be directed in some such efforts to reform and reorganize their own organizations in order to deal with their own problems, it is probable that there would be less insistence on the extension of governmental regulation of business and industry or industrial courts and the like. In default of the development of functional organization to deal with functional problems the administrative agency of regulation or control has come.

5The Guild Socialist literature is large, although the accomplishment is small. G. D. H. Cole is clearest expounder of it. See H. Finer's useful account of the German movements in Representative Government and a Parliament of Industry, Allen and Unwin, London.

6The documents on these movements are now embalmed in the files of the war records,—presumably those of the U. S. Dept. of Labor.
Due to the failure of issues and programs to become carefully defined by the parties and party leaders, due to the lack of satisfactory conditions of leadership, organization, procedure and debate and study by legislatures, due to the new type of problem—technical, detailed, involved, requiring special knowledge and expertise—and finally due to the decline of public confidence in legislators and yet the failure of social groups to organize to deal with their own difficulties, the new problem of administration is here. The new administration includes a wide share of policy formulation; it requires a large measure of discretion on the part of the civil servant; it claims wide exemption from judicial review of its findings of fact; in brief, we are seeing a development somewhat akin to the rise of administration in the days when the Tudors and the great monarchs were welding together the modern national state. A changing social order threw aside the instruments and tools which were no longer adequate. It sought a new instrument—more flexible, more adaptable, quicker, keener. The rising middle classes of the early days of discoveries, widening commerce and the new nationalism found an instrument to their hand in the monarchy.\(^7\) The modern community of an intricate economic order, an urban social scheme, a general development of elementary education and a wide sharing of the possibilities of political power, confronted by difficult and puzzling problems of conservation of natural and human resources turns to the new kind of administration as its instrument. Its parties and its legislatures in despair place upon these agencies heavy burdens.

Congress, for example, may determine upon a policy of developing our rivers as a part of a system of water transportation. Yet these rivers are crossed by bridges that also are an important part of our transportation system. Obviously Congress is incapable of inserting in the law just what regulations as to number and height of spans each bridge in the United States should have. Nor can it lay down any really helpful rule which will apply at once to the needs, let us say, of the Charles River and the San Joaquin. It therefore gives to the Engineering Corps of the War Department the duty of determining “unreasonable obstructions” to navigation and the supervision of their removal.\(^8\)

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\(^7\)Pollard's Factors in Modern History and Einstein's Tudor Ideals contain pictures of the significance of the Tudor monarchy which are suggestive reading to contemporaries of Mussolini and Lenin.

Again Congress may establish certain tariff rates but be fearful that at some future time, perhaps when it is not in session, a foreign state may also establish prohibitive rates on our agricultural products. It therefore fixes other reciprocal rates which the president is left free to apply when he determines, as a matter of fact, that foreign states have established prohibitive rates. Here, of course, a policy is fixed by Congress but contingent upon the finding of a certain state of affairs to exist by the president.\(^9\)

Suppose Congress commits the nation to the general policy of forest conservation. Large forest preserves are established. But how shall they be administered? Shall grazing be permitted in their meadows and when and under what conditions? And shall similar policies be maintained for all the preserves? Confronted with this difficulty the problem is shunted upon the forest service which must make the regulations.\(^10\)

Now in all these cases the point at which legislation begins and administration ends is most difficult to determine. One can assert, in any event, that we can see here the steady growth in importance of administration. Anyone who is at all familiar with the type of statute so loved by Legislatures—crammed with detail, with concessions to special interests but overriding many considerations of effective enforcement—must agree that this new method of self-denial by the Legislature is better. To be sure it is not so much self-denial as sheer necessity.

We may have a situation in which the Legislature, confronted by a complex social problem does not presume to offer an absolute solution but creates an agency peculiarly qualified by reason of knowledge and experience to deal wholly with the problem. The Pennsylvania Legislature cannot go in person to inspect each mine to determine how wide the pillars of coal separating various mines should be to prevent flooding or caving. It can, however, leave such determination wisely to a board composed of mining engineers representing the adjoining properties with a state mine inspector.\(^11\)

An even broader delegation of policy formulation is found in the granting of power by Congress to the Interstate Commerce Commission to permit greater charges for short hauls than long.

Here the delegation of legislative power is nearly complete. While the statute expresses the obvious desire of the national Legislature to establish a policy of removal of special privilege by means of governmental regulation it is equally obvious that it felt unable to provide by statute for the many situations which could be appraised properly only by an expert commission. Chief Justice White in writing an opinion concerning this problem unfortunately avoids the real issue of delegation here, and in his decision summarily crams new factors into old categories of "legislative" and "executive functions."

There is another case which admirably illustrates the new problem of administration which is emerging clearer from the judicial haze of the situations just described. The state of Ohio gave to a commission the duty of reviewing and censoring moving pictures. The law in which the Legislature established this primary policy contained, as a standard of censorship which the commission was instructed to follow, the words "moral, educational or amusing and harmless character."

Now it is obvious that there can be a very wide range of interpretation concerning these words. Does this not constitute a palpable delegation of legislative power? Have we not gone a long way from the mere "filling in of details" left by law to the executive in earlier cases? How does the court face this?

As a matter of fact Mr. Justice McKenna writing the decision in Mutual Film Corporation v. Ohio Industrial Commission, (1915) remarked:

"Undoubtedly the Legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply."

Having paid this lip service to the traditional separation of powers idea he goes on to meet the claim that those principles are so vague as to constitute a delegation of legislative power:

"The statute by its provisions guards against such variant judgments and its terms like other general terms, get precision from the sense and experience of men and become certain and useful guides in reasoning and conduct . . ."

"Upon such sense and experience, therefore, the law properly relies."

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13 See the note on this case in 28 Harv. L. Rev. 110.
And then there is the final practical argument.

"If this were not so, the many administrative agencies created by the state and national governments would be denuded of their utility and government in some of its most important exercises become impossible."

No recent case, I think, brings out in such bold relief our situation. The Legislature must delegate, qualified only by the most general of pietistic phrases, policy-determining as well as executing power to special administrative agencies. Otherwise social control through the government would be impossible today. And those administrative agencies must develop their own standards through their "sense and experience," pragmatically.

The suggestion that the present tendency toward developing a swifter and more flexible type of administration is comparable to the development of the Tudor monarchy suggests, unhappily, the Star Chamber. The phrase now frequently appears in use, particularly where a few are gathered together to discuss the release of administration from judicial control. The Supreme Court itself in a recent case apparently attempts to pull back. In the majority opinion in the case of Ohio Valley Water Co. v. Ben Avon Borough, there is plainly a withdrawal toward a wider extension of judicial review of rate making, while the majority opinion as expressed by Mr. Justice Brandeis maintains that the question (here one of valuation) is essentially one of fact which should be left to the commission. Commenting on this case, Professor Nathan Isaacs remarks:¹⁶

"Whatever one may think of this latest case, it throws light on one feature of our judicial history, the power of the court to come back and to take a hand in the decision of matters supposed to have been surrendered by them to the administrative. And it is interesting to see how carefully in its advance the court retraces the very steps it took in its retreat. It now refuses to see the discretion element in such a process as valuation and to its view the finding of the commission on the subject before it assumes the guise, for the time being, of a 'judicial question.'"

Dean Pound has remarked that in a modern state, executive justice, beyond what is involved in a proper balance between law and administration, is an evil, even if sometimes a necessary evil. "It has always been, and in the long run it always will be crude and as variable as the personalities as officials."¹⁷

¹⁵(1920) 253 U.S. 287, 64 L.Ed. 908, 40 S.C.R. 527.
¹⁶Review of Administrative Findings, 30 Yale L. Jour. 781,—a very able survey of the subject.
¹⁷55 Am. L. Reg. 137.
It is here certainly pertinent to remark that judges, too, have personalities. Yet it is true that the reaction against administrative power has set in, and it is also true that reaction is in large measure because of the enormous extension of governmental authority during the war. The interference with expression of opinion, with business and industry, the selective service plan—these are examples of the attempt at regimentation of a whole nation. The same tendency to withdraw from state control and to reduce administrative agencies to the wider scrutiny of the judiciary is seen in England, especially after the high water mark of the *Arlidge Case*. The London Nation (a disciple of the Liberal tradition, it is true) stated editorially on March 17, 1923:

“It is an important characteristic of our time that the executive power of the state should have extended, within recent years, to boundaries far beyond what were deemed legitimate by the classic doctrines of the last age. In the realm of delegated legislation, there is much to be said for the development; though the famous *Arlidge Case* shows the danger that this power may be used to oust the jurisdiction of the courts. That danger is even more apparent in the exercise of the prerogative by the government.”

Similarly Mr. C. K. Allen, discussing the significance of some recent English cases in which the court had recognized the finality of the acts of the administrative authority, entitles his article, *Bureaucracy Triumphant*.9

Mr. William D. Guthrie in his presidential address before the New York State Bar Association on January 19, 1923, remarked:

“Although the principle of the separation of governmental powers was long observed in this country and generally recognized as a sound governmental policy, we must perceive that it is being gradually undermined in national and state affairs as a result of the impatience with the delay involved in being just according to law.”

This is, perhaps, a fair expression of how the lawyer feels toward the developments we have noted. One should add that Mr. Guthrie supplemented his statements with the following remark:

“The theory of regulation by commissions is inherently sound and in practice necessary. Legislative bodies such as Congress or our state legislatures cannot act in these matters as intelligently and efficiently as a board or commission of practical experts familiar with the business to be controlled or regulated.”

In brief, despite reluctance to permit the final control to escape from the court, sheer necessity requires a large share of

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18[1915] A.C. 120; see the notes on this case in the Political Quarterly, February 1915, p. 141 and 28 Harv. L. Rev. 198.
19Quarterly Review, October 1923.
power being conferred upon administrative agencies by legisla-
tures; and the kind of technical problem raised often makes it
difficult for the court to review administration effectively.

Perhaps the latest example of the continuing force of these
facts is that offered by the Tariff Act of 1922. I have already
referred to the Senate debates on the provisions for a "flexible
tariff"—that is, the conferring of power upon the president by
sections 315 and 316 to increase rates within 50 per cent of the
value of the merchandise or to change its classification, provided
certain specified conditions enumerated in the act were met. This
section was bitterly attacked in the Senate on the ground that
it was an unconstitutional delegation of legislative power to the
executive. A careful reading of the debate leads one to wonder,
indeed, if Mr. Guthrie's observations concerning the soundness
of the principle of the separation of governmental powers are en-
tirely justified. Senators frankly admitted that the Congress was
not able to deal with the conditions affecting the tariff because
of the rapidity with which those conditions changed and the
technical problems surrounding them. At the same time Congress
desired to enact a general policy of protection of American goods
from foreign competition. The Senate Finance Committee sub-
mitted in support of its advocacy of the sections a memorandum
on their constitutionality by Judge De Vries of the customs
court of appeals in which the outstanding cases are summarized
and a very interesting argument made.

It is interesting to notice that this argument was received
coldly by the Democratic Senators, but welcomed by the Re-
publican Senators who were supporting the new act. President
Harding himself sent a letter advocating the plan. In a letter
dated at the White House on August 11, 1922, and addressed
to Senator McCumber he stated that

"It has seemed to me that the varying conditions following
the World War make it expressly essential that we have this
means of adapting our tariffs to meet the new conditions. More-
over I believe that it is a highly constructive and progressive step
in retaining the good and eliminating the abuses which grow
up under our tariff system."

Senator McCumber, the chairman of the finance committee
which introduced the proposal, with other Republican Senators
urged strongly the constitutionality of the sections as based upon
the memorandum of Judge DeVries. Senator Edge went so far
as to assert that the power given the president would be more
wisely used than it could be used by the Congress itself.
“Here the members of the Senate and the other House, representing as they do certain subdivisions of the country are approached on every hand... to particularly look after the interests of this or that manufacturing industry or other organization... The president is president of the entire country... So any decisions made by the president of the United States would... be to a great extent removed from sectional influence and control.”

On the other hand Senators Underwood, Simmons, Walsh, and Reed attacked the section on the ground that it delegated the power of Congress to the president. Said Senator Underwood:

“It will be the executive mind of the government that will hereafter regulate the amount of taxes at the customhouse rather than the legislative determination of the matter. Therefore, it is clear to me that these provisions of the bills are not within the terms of the constitution of the United States.”

One obvious fact emerges from the debate. While the opposing sides were claiming to interpret the constitution correctly, by a curious coincidence the disagreement concerning the constitutional question seemed to correspond to the division between the two parties on tariff lines. Those who desired a revision downward desired to interpret the section as an unconstitutional delegation of legislative power. Those who desired the flexible adjustment of tariff rates in order to prevent competition from foreign goods under conditions unfavorable to the American merchants and manufacturers found that the provision was constitutional, and brought forward a memorandum of the judge of the customs court of appeals in support of their claims. To the layman it would appear that this new administration, whose limited release from judicial scrutiny and control and whose widening discretion is viewed with alarm by the groups who are traditionally and professionally interested in that control, becomes an issue chiefly where the desirability or the lack of desirability of the particular function to be administered is called into question. Unquestionably the courts, for example, have been more lenient with administration in its protection of public health and order than they have with administration in the regulation of business and industry. They grant more power to administrative officials in deportation or exclusion proceedings than they would permit in the regulation of housing in the interest of a city plan. And it is not unworthy of attention that part of the agitation for administrative tribunals for such matters as workmen’s compensation cases grew out of impatience not with the slowness of the courts in establishing justice but with their obsolete methods and
concepts. The ancient advice of "reform in order that you may preserve" should be considered by those who deplore the extension of administrative discretion. Mr. Warren Pillsbury, in his suggestive articles on Administrative Tribunals remarks that:

"Until American civil procedure has been brought to a state of efficiency by thoroughgoing reformation, as demanded from time to time by leading jurists and as accomplished in England during the last fifty years, the field of the administrative tribunal will be uncertain. The tendency will continue to transfer from the courts to the administrative officers further functions heretofore exercised by the judiciary. The fixing of rates for common carriers and trial of workmen's compensation claims are but instances of such movement. With, however, a simplified judicial procedure and greater judicial efficiency, the tide may turn in the opposite direction.

"In the meantime, administrative tribunals have their place. Some are old and well established; others are newer and on the borderline between executive and judicial dispensation of justice. . . . Care should be taken, however, to see that some judicial review be had in nearly all cases of decisions of such bodies. Such power of review should be of limited scope and speedy in determination, as by certiorari and other prerogative writs, but not so broad as to cripple the efficiency of the executive departments concerned by the application of what is popularly called 'judicial red tape.'"

If the considerations of judicial decisions and of legislative debates are frequently barren in their use of such categories as "delegation of legislative power," "administrative determination of fact" and "judicial review of questions of law," the student of administration on the other hand can show some substantial progress in the field of control of administration by means which are other than judicial. I refer chiefly to the great advances of the past few years in administrative control over administration and legislative control over administration. These are both almost entirely neglected by the legal profession in their considerations of the subject, and yet it is important to recall that the courts are by no means the only bulwark of liberties and effective response to the needs of a social order. This latter attitude is well expressed by Judge Cuthbert Pound of the New York court of appeals.

"Mr. Justice Holmes said in an address before Harvard Law School Association, February 13, 1923: 'The United States would not come to an end if we lost our power to declare an Act of

\[2036\] Harv. L. Rev. 405, 583.

\[2110\] Am. Bar Ass'n Jour. 409—article entitled, Constitutional Aspects of American Administrative Law.
Congress void . . . I do not think the Union would be imperiled if we could not make the declaration as to the laws of the several states.' With this declaration I think the great majority of jurists, historians and statesmen have little sympathy but if that end comes, the United States and the several states will enjoy a republican form of government only so long as the sovereign will is guided by reason."

It is difficult to disagree with the final generality, of course, whatever it may mean. Yet one can urge that the despairing note so frequently struck as above when other agencies of government than the courts are concerned might be restrained if a better proportioned and informed attitude might be taken. In the past few years this country has seen a tremendous development of interest in improved organization of administration as well as some substantial accomplishments in developing responsible administrative leadership. We have also seen a great development in better methods of classification of personnel, recruitment, salary standardization, promotional and retirement systems and similar problems of personnel. New forms of legislative control have been adopted and developed. Finally administrative control over administration through personnel, financial, purchasing and audit agencies has been extended or introduced. These movements are registered by the establishment of innumerable organizations for government research and by the work of such journals as the National Municipal Review. It is doubtful if for any problem of government—judicial, constitutional, elections or any other, we can show such a mass of substantial achievement during the past twenty years as we can for the problem of administration. The overhead organization of administration has been thoroughly discussed in such reports as that of the Illinois Efficiency and Economy Commission, the New York State Reconstruction Commission, the various studies—purely descriptive—of the Institute for Government Research at Washington, and, in England, in the Report on Machinery of Government of the Ministry of Reconstruction. The recent developments in the field of administrative reorganization in New York state under Governor A. E. Smith, in Pennsylvania under Governor Pinchot, in Illinois under Governor Lowden, in Massachusetts following the Constitutional Convention of 1917, in Tennessee and in other states are significant.

At the present time Minnesota has an interim committee of the House engaged upon a study of the problem locally. The spread of the city manager plan is further evidence of the same tendency.
Similarly in the field of personnel there has been great development of improved classification of employments, standardization of positions with qualifications, salaries, and work conditions, improved methods of examination and recruitment, including promotions, and the adoption of adequate retirement arrangements. The better methods of legislative control over administration which the new budget systems provide in this country are known even beyond the narrow circle of students of such matters. The national budget plan, as a matter of fact, followed after plans already adopted and in operation in many commonwealths and cities—notably those of Maryland and Massachusetts and Illinois, among the commonwealths.

But the most interesting developments in the field of control come from within the administrative organizations themselves. The person who talks so glibly of the spendthrift character of administration, the spoils system and similar evils as contrasted with the spotless purity and high technical qualifications of the courts would do well at least to acquaint himself with the more recent control devices of such a state as Massachusetts with its division of civil service and its commission on administration and finance and similar agencies in other states. By establishing a continuous scrutiny and survey of all matters of finance, personnel, purchasing, printing, construction, and similar fields of administration the executive organization of the state comes to exercise a control over itself in the interest of more effective work. In the government at Washington an interesting example of this movement is seen in the bureau of the budget. In fact the present danger is a too great emphasis on economy and centralized control in the interest of cutting down expenditure which may injure the services and defeat its own purpose.

In brief, judicial control is only one form of control over administration, and not necessarily the most effective. Legislative control through committee investigation, budget scrutiny, as well as actual statute provisions aims to keep the policy and application of the administrative departments in tune with that of the majority control of the legislative body. The overhead control of the administrative organization itself—the British treasury, the French ministry of finance, the United States bureau of the budget, the many state departments of finance or efficiency and civil service and purchasing—is exercised in the interest of more efficient utilization of the powers and resources of the govern-
Finally judicial control aims to protect the rights of citizens from illegal acts of the administration. As we have seen, this last form of control becomes difficult with the expansion of administration into fields where expert knowledge and wide discretion are essential if the wheels of government are to turn at all, and it is difficult also because with the extension of governmental regulation and control there is a constantly increasing opposition from the interests controlled who seek to turn back the movement by appeals to constitutional limitations devised for a simpler agrarian society of small population and large natural resources. What the student of administration might well urge upon his professional colleague of the law is a wider perspective in attacking the problem, a perspective which will at least include some consideration of the causes of the new administration, and of the other forms of administrative control which have recently been so widely developed. Whether there is still another way out of the difficulties in our present system, a way out suggested by the success of the French council of state as an expert court of review of administrative cases applying a special administrative law, is a fascinating subject of inquiry. Certainly there have developed in this country several administrative tribunals in such fields as public lands, customs, claims, immigration proceedings, as well as the short-lived Commerce Court. And even Professor Dicey, whose views on the subject were expressed in his The Law of the Constitution has since admitted that it is not entirely clear that there is no administrative law in England.22

The new administration, which has emerged so suddenly that many of us are still unaware of its implications or problems or challenges, nevertheless was foreseen by the shrewdest of Victorian students of politics. Walter Bagehot, in his Biographical Studies, gave us the portraits of some great administrators. And he defined a great administrator23 in terms which we today can recognize as applicable to our situation:

"Ordinary administrators are very common; every-day life requires and produces every-day persons. But a really great

22There is an interesting literature on the French system. The best articles readily available to the American reader are those of Duguit, 29 Pol. Sci. Quart. 383; Dicey, op. cit. ch. 12; Sait, The Government and Politics of France, ch. 11. On the subject of American tribunals the articles of T. R. Powell are excellent. They are found in 1 Am. Pol. Sci. Rev. 583; 24 Harv. L. Rev. 268, 333, 441, and 22 Harv. L. Rev. 360; Ghose, Comparative Administrative Law, Calcutta 1919, contains an excellent discussion of the American, English and French systems.

23William Pitt.
administrator thinks not only of the day but of the morrow; does not only what he must but what he wants; is eager to extirpate every abuse, and on the watch for every improvement; is on a level with the highest political thought of his time, and persuades his age to be ruled according to it—to permit him to embody it in policy and in laws. Administration in this large sense includes legislation, for it is concerned with the far-seeing regulation of future conduct, as well as with the limited management of the present. Great dictators are doubtless rare in political history; but they are not more so than great administrators, such as we have just defined them. It is not easy to manage any age; it is not easy to be on a level with the highest thought of any age; but to manage that age according to that highest thought is among the most arduous tasks of the world. The intellectual character of a dictator is noble but simple; that of a great administrator is also complex."

Modern administration as defined here is too complex, then, to admit of simple solutions for its problems. It may even be difficult to define what administration is. Certainly the courts have had their troubles at it.