
Robson: Justice and Administrative Law - Third Edition

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Justice and Administrative Law. Third Edition. By WILLIAM A. ROBSON. London: Stevens & Sons, Ltd., 1951. Pp. xxxiii, 674. 30s.

The growth of the administrative process in government may be the most significant development in Anglo-American law since the development of equity. Although widely expanded, many matters in the field of administrative law are still involved in controversy. In Britain, as in other Anglo-American law countries, administration has flourished (in spite of Dicey's long-maintained contention that there was no place for it under the British constitution). Robson's book deals with one of the main, and most controverted, questions in the field, namely that as to the adequacy of administrative adjudication as an instrument for the dispensing of justice.

Although the current edition is the third, so that many of the author's views, expressed therein, are not entirely new, it still seems worth while to review the book as a whole since it contains the substantially current thought (too much neglected in this country) of a leading British writer.

First, as to the author's general position: He foresees an almost inevitable further expansion of the administrative process in government (page 623), but he is neither antagonistic toward the present broad development nor fearful of the expansion he sees ahead. The book seems amply to justify such an attitude as being well within the range of reason, even though the book does not deal comprehensively with the whole field of administrative law, even in Britain.

An important common element in Anglo-American administrative law is the large amount of adjudicative (sometimes more narrowly called "judicial") power vested in administrative agencies. The "administrative tribunal" shares with the courts a large if not the major part of the governmental adjudicative function; so much so that we have two great "judiciaries"—and not merely the one consisting of the traditional courts. Robson gives only incidental attention to the very different matter of delegation of legislative power to administrative bodies. His main concern is with the adjudicative powers of administrators for it is in connection with the exercise of this latter power that he finds the problem of justice. (As respects legislative justice, under the British system of Parliamentary supremacy the question, in a sense, can hardly arise—the legislature "can do no wrong.")

The book, of substantial size, but largely narrowed in scope to the matter of administrative adjudication, permits and in fact contains an intensive and thoughtful consideration of the many and important matters which bear on the working in adjudicative matters of the administrative tribunal. The book is, therefore, a valuable supplement to other works on administrative law which give less detailed consideration to the matter of adjudication, as well as a major work in its own right.

It is comparatively, if not totally, unimportant that English agencies, foreign to us, are considered in Robson's book. To those interested in understanding the nature of the adjudicative function in government; the many different kinds of occasions calling for the exercise of adjudicative power; the many different kinds of officials other than judges who may be called upon to exercise such power; the advantages and disadvantages of using one kind or another; the practical considerations such as those relating to speed, economy, and efficiency, in getting the adjudicative chore done; the problems of reconciling the claims to proper safeguarding of both public and

private interests in the often difficult and intricate matters calling for exercise of adjudicative power;—to those interested in such matters (as distinguished from the workings of particular agencies), it is important that they realize that these problems are not merely local or national. Transport regulation, health measures administration, trade regulation, education, and many other subjects, as they bear on such matters, are as well studied when the agencies are English ministries as when they are American commissions.

The American reader might, however, skip certain chapters without too great loss of an opportunity to explore fundamentals. But the following chapters should not be missed: Chapter 1 gets to the heart of the basic problem of what adjudicative power is. Montesquieu and separation of powers notwithstanding, Robson demonstrates that there is no such thing as a "divine right" of powers to be separated; that administrative and judicial powers are often neither separated nor separable; that adjudication is not exclusively a "judicial"—that is, a court—matter, but that on the contrary it is equally, and in numerous and important concerns, an administrative matter. Not all adjudicative power is a monopoly of the "judiciary".

Chapter 2, entitled "Justice in the Courts," is in fact broader in scope than its title. It is largely a comparative study of the working of both kinds of adjudicative tribunals, the administrative and the judicial. Both have good and both have bad features. The reader should learn that not all judicial adjudication is perfect, and that not all administrative adjudication is inferior (much less inherently evil), and that the sensible thing to do is to utilize both in government, each where it serves best, and subject to such controls as will tend to strengthen its weak points.

Chapter 5, which analyzes the concept of the "judicial" mind, attitude, manner, and action, is a "must" chapter. Here, psychology as well as law must be considered. We cannot legislate into an intemperate, biased, ignorant, slothful, or corrupt official, whether on an administrative or judicial tribunal, the qualities of judicial-mindedness which he lacks. But good administrators, no less than good judges, have certain intellectual and moral needs, common to all good men, namely that they be able to act consistently, objectively, impartially, predictably, reasonably—and even in some matters at discretion—when called upon to perform the great social function of dispensing justice to their fellow men. Able and honorable men, of proper judicial temperament, are available to serve not only the courts but the administrative departments as well. Not even judicial-mindedness is a monopoly of the court judiciary.

Finally, in Chapter 8, is an evaluation of, particularly, the adjudicative aspect of the administrative process. As a practical matter, we must, of simple and demanding necessity, have administrative as well as judicial adjudication; but this does not condemn us to live under an evil, or even inferior, governmental process. Especially worth considering in this connection is the assertion that there is no sound reason to believe that in Britain the administration is less independent, or more subject to political influence, than the court judiciary (page 582). The danger of such interference is dismissed as a "bogey." Not to be overlooked is the point that as to structure, personnel, and operations, the administration is controllable by law. Properly used and controlled, the administrative tribunal is not only a necessary, but also a reasonably adequate (like the courts) instrument for dispensing justice.

Passing from the matter of private justice in individual cases, to the even

more grave matter of preservation of liberty under free government, it is both interesting and reassuring that Robson quotes Pound's view (page 623), delivered in regard to the American situation but considered by Robson to be equally applicable in England, that we need not fear for the liberty provided by the Constitution, in the working of administrative adjudicators.

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Cases and Materials on Torts. By YOUNG B. SMITH and WILLIAM L. PROSSER. Brooklyn: Foundation Press, 1952. Pp. xix, 1239. \$9.00.

Dean (now Emeritus) Smith and Dean Prosser have made a significant contribution to the field of torts casebooks and at the same time have enlarged upon the pattern of the "Cases and Materials" type of book. While topical arrangement is essentially traditional, the outstanding feature of this work is to be found in the amount and style of the supplementary materials.

Adequate coverage of such a vast field as torts in the time allowed in the ordinary curriculum requires considerable evaluation and selection of topical subject matter, as well as emphasis upon the selected material. By economical treatment of the more stable areas of the subject, the authors have been able to gear the book to expansion in the area of present day problems arising in a rapidly changing and increasingly complex social and economic order. They have limited the number of principal cases to 415, which in their words "is as many as can adequately be discussed in class." By the inclusion of some text and a great amount of carefully selected case notes and commentaries, together with case problems and comparisons, considerable material is provided for independent student assimilation. The instructor is thus allowed more classroom time for the more intricate and subtle concepts and, for purposes of exposition, is supplied with a wealth of material with which the student has had an opportunity to familiarize himself before class. This inclusion of background and supplementary material is in accord with a trend evidenced by most of the newer books of this type and represents a retreat from the pure casebook of the past. It differs from many casebooks in that it is more extensive in scope and is so organized as to permit broad or limited use of the supplementary material as desired without affecting the coherence of the topical subject matter.

The selection of cases and commentary notes demonstrates a need for re-evaluation of many of the principles heretofore regarded as sound and basic, since modern technological, scientific and social advancements have minimized many of the considerations upon which such principles were predicated. This is particularly brought out in the treatment of (a) emotional and mental injuries as independent wrongs, with related problems of damages and causation, (b) liability of manufacturers to third persons, and (c) defamation.

Cogently emphasized are the need for care in analyzing an opinion with regard to the factual problems before the court, and the danger of over-generalization. An illustration of this is to be found in the section dealing with unusual or ultrahazardous activities and the doctrine of the precedent setting case of *Rylands v. Fletcher*. The interpretation placed upon that decision by some courts and many writers, which may be attributed to generalization, was strictly limited in England in the case of *Read v. Lyons & Co., Ltd.*,

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