administrative law

administrative law, the legal framework within which public administration is carried out. It derives from the need to create and develop a system of public administration under law, a concept that may be compared with the much older notion of justice under law. Since administration involves the exercise of power by the executive arm of government, administrative law is of constitutional and political, as well as juridical, importance.

There is no universally accepted definition of administrative law, but rationally it may be held to cover the organization, powers, duties, and functions of public authorities of all kinds engaged in administration; their relations with one another and with citizens and nongovernmental bodies; legal methods of controlling public administration; and the rights and liabilities of officials. Administrative law is to a large extent complemented by constitutional law, and the line between them is hard to draw. The organization of a national legislature, the structure of the courts, the characteristics of a cabinet, and the role of the head of state are generally regarded as matters of constitutional law, whereas the substantive and procedural provisions relating to central and local governments and judicial review of administration are reckoned matters of administrative law. But some matters, such as the responsibility of ministers, cannot be exclusively assigned to either administrative or constitutional law. Some French and American jurists regard administrative law as including parts of constitutional law.

The law relating to public health, education, housing, and other public services could logically be regarded as part of the corpus of administrative law; but because of its sheer bulk it is usually considered ancillary.

Defining principles

One of the principal objects of administrative law is to ensure efficient, economical, and just administration. A system of administrative law that impedes or frustrates administration would clearly be bad, and so, too, would be a system that results in injustice to the individual. But to judge whether administrative law helps or hinders effective administration or works in such a way as to deny justice to the individual involves an examination of the ends that public administration is supposed to serve, as well as the means that it employs.

In this connection only the broadest generalities can be attempted. It can be asserted that all states, irrespective of their economic and political system or of their stage of development, are seeking to achieve a high rate of economic growth and a higher average income per person. They are all pursuing the goals of modernization, urbanization, and industrialization. They are all trying to provide the major social services, especially education and public health, at as high a standard as possible. The level of popular expectation is much higher than in former ages. The government is expected not only to maintain order but also to achieve progress. There is a widespread belief that wise and well-directed government action can abolish poverty, prevent severe unemployment, raise the standard of living of the nation, and bring about rapid social development. People in all countries are far more aware than their forefathers were of the impact of government on their daily lives and of its potential for good and evil.

The growth in the functions of the state is to be found in the more-developed and in the less-developed countries; in both old and new states; in democratic, authoritarian, and totalitarian regimes; and in the mixed economies of the West. The movement is far from having reached its zenith. With each addition to the functions of the state, additional powers have been acquired by the administrative organs concerned, which may be central ministries, local, provincial, or regional governments, or special agencies created for a particular purpose.

Distinctions between public administration and private action

Activities such as traffic control, fire-protection services, policing, smoke abatement, the construction or repair of highways, the provision of currency, town and country planning, and the collection of customs and excise duties are usually carried out by governments, whose executive organs are assumed to represent the collective will of the community and to be acting for the common good. It is for this reason that they are given powers not normally conferred on private persons. They may be authorized to infringe citizens’ property rights and restrict their freedom of action in many different ways, ranging from the quarantining of infectious persons to the instituting of criminal proceedings for nonpayment of taxes. To take another example, the postal laws of many countries favour the post office at the expense of the customer in a way unknown where common carriers are concerned. Again, a public authority involved in slum clearance or housing construction tends to be in a much stronger legal position than a private developer.

The result of the distinction between public administration and private action is that administrative law is quite different from private law regulating the actions, interests, and obligations of private persons. Civil servants do not generally serve under a contract of employment but have a special status. Taxes are not debts, nor are they governed by the law relating to the recovery of debts by private persons. In addition, relations between one executive organ and another, and between an executive organ and the public, are usually regulated by compulsory or permissive powers conferred upon the executive organs by the legislature.

The law regulating the internal aspects of administration (e.g., relations between the government and its officials, a local authority and its committees, or a central department and a local authority) differs from that covering external relations (those between the administration and private persons or interests). In practice, internal and external aspects are often linked, and legal provisions of both kinds exist side by side in the same statute. Thus, a law dealing with education may modify the administrative organization of the education service and also regulate the relations between parents and the school authorities.

Another distinction exists between a command addressed by legislation to the citizen, requiring him to act or to refrain from acting in a certain way, and a direction addressed to the administrative authorities. When an administrative act takes the form of an unconditional command addressed to the citizen, a fine or penalty is usually attached for failure to comply. In some countries the enforcement is entrusted to the criminal courts, which can review the administrative act; in others the administrative act itself must be challenged in an administrative court.

The need for legal safeguards over public administration

Statutory directions addressed to the executive authorities may impose absolute duties, or they may confer discretionary powers authorizing a specified action in certain circumstances. Such legislation may give general directions for such activities as factory inspection, slum clearance, or town planning. The statute lays down the conditions under which it is lawful for the administration to act and confers on the authorities the appropriate powers, many of which involve a large element of discretion. Here the executive is not confined merely to carrying out the directions of the legislature; often it also shares in the lawmaking process by being empowered to issue regulations or ordinances dealing with matters not regulated by the statute. This may be regarded either as part of the ordinary process by which the legislature

delegates its powers or as an inevitable feature of modern government, given that many matters are too technical, detailed, or subject to frequent change to be included in the main body of legislation—legislation being less easy to change than regulations.

Whatever the source of the executive's rule-making power, safeguards against misuse are necessary. For instance, the regulation must not exceed the delegated powers; its provisions must conform with the aims of the parent statute; prior consultation with interests likely to be affected should take place whenever practicable; and the regulations must not contravene relevant constitutional rules and legal standards. In some countries regulations are scrutinized by a type of watchdog known as the council of state before they come into force; in others, by the parliamentary assembly; and in yet others, by the ordinary courts.

In most countries the executive arm of government possesses certain powers not derived from legislation, customary law, or a written constitution. In the United Kingdom there are prerogative powers of the crown, nearly all of which are now exercised by ministers and which concern such matters as making treaties, declaring war and peace, pardoning criminals, issuing passports, and conferring honours. In Italy, France, Belgium, and other continental European countries, certain acts concerning the higher interests of the state are recognized as *actes de gouvernement* and are thereby immune from control by any court or administrative tribunal. In the German Empire (1871–1918) the principle that an administrative act carried its own legal validity was accepted at the end of the 19th century by leading jurists. This led to the doctrine that administration was only loosely bound to the law. The doctrine was rejected in the Federal Republic of Germany (1949–90), however, and efforts were made to reduce the area in which the executive was free to act outside administrative law.

Bureaucracy and the role of administrative law

An inevitable consequence of the expansion of governmental functions has been the rise of bureaucracy. The number of officials of all kinds has greatly increased, and so too have the material resources allocated to their activities, while their powers have been enlarged in scope and depth. The rise of bureaucracy has occurred in countries ruled by all types of government, including communist countries, dictatorships and fascist regimes, and political democracies. It is as conspicuous in the former colonial states of Africa and Asia as among the highly developed countries of western Europe

or North America. A large, strong, and well-trained civil service is essential in a modern state, irrespective of the political character of its regime or the nature of its economy.

Fear of the maladies that tend to afflict bureaucracy has produced a considerable volume of protest in some countries; and, even in those where opposition to the government or the party in power is not permitted, criticism and exposure of bureaucratic maladministration are generally encouraged.

Bureaucratic maladies are of different kinds. They include an overdevotion of officials to precedent, remoteness from the rest of the community, inaccessibility, arrogance in dealing with the general public, ineffective organization, waste of labour, procrastination, an excessive sense of self-importance, indifference to the feelings or convenience of citizens, an obsession with the binding authority of departmental decisions, inflexibility, abuse of power, and reluctance to admit error. Many of these defects can be prevented or cured by the application of good management techniques and by the careful training of personnel. A whole range of techniques is available for this purpose, including effective public relations, work-study programs, organization and management, operational research, and social surveys.

Administrative law is valuable in controlling the bureaucracy. Under liberal-democratic systems of government, political and judicial control of administration are regarded as complementary, but distinct. The former is concerned with questions of policy and the responsibility of the executive for administration and expenditure. The latter is concerned with inquiring into particular cases of complaint. Administrative law does not include the control of policy by ministers or the head of state.

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