

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

The recent history of the administrative process has been a seemingly endless succession of crises, and the immediate future appears to promise no conclusive relief. Although this prospect may be somewhat distressing at first blush, it appears to be a normal function of a regulatory system that seeks continually to balance changing needs and resolve competing interests. Nevertheless, it is no mean tribute to the essential validity and vitality of the administrative process that it has managed to survive the trying ordeals to which it has periodically been subjected.

In the 1930's, a full-scale frontal assault was launched against the administrative process by those who opposed governmental regulation of economic and social endeavor in any form whatever. Rallying under banners bearing such legal-sounding legends as "due process" and "separation of powers," these critics seemed intent on emasculating or even destroying it. That they failed was owing not to any lack of vigor with which they pursued these ends, but rather to the almost universal recognition that the administrative process afforded the sole feasible means by which government could cope with the ever more complicated and voluminous problems that it was being called upon to solve.

The next attack on the administrative process was based on narrower procedural grounds. Critics, largely lawyers, assailed it as being deficient, both in conception and in actual operation, in its provision of safeguards against unfairness. Again, however, what might have been a crippling blow was successfully parried on the judicial, executive, and legislative levels, more or less effectively, by distinctive responses appropriate to each of the branches of government.

Today, the administrative process once more is undergoing a strenuous siege of examination and evaluation—this time, in terms of the extent to which it has, in practice, realized the hopeful expectations of its early champions. This latter-day criticism has covered a broad spectrum of charges—inefficiency, undue delay and expense, prejudgment of controversies, absence of clear rules, *ex parte* influences, capture by regulated industries, lack of expertise, excessive power of staffs, inadequate personnel, corruption, and lack of coordination—and these by no means exhaust the list. Suggested remedies have been similarly varied and wide-ranging, and the

eventual response that issues will profoundly affect the future efficacy of the administrative process.

It is against this background that the contributors to this symposium have cast their submissions, analyzing the suggested shortcomings of the administrative process and their proposed cures. No pretense at final solutions is offered, since the dynamic nature of any viable regulatory scheme requires almost infinite flexibility, a capacity for continuous policy adaptation and institutional change. It is hoped, however, that the thorough ventilation of underlying basic issues effected by this symposium will facilitate the rigorous analysis that a sound approach to this crucial subject demands.

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On a more personal note, the Editor here records his imminent retirement, after two years as Associate Editor and six years as Editor-in-Chief. He wishes to express his deep appreciation for the support and assistance that he has received from his editorial associates and advisers and from the many others, both within and without the Duke University community, who have given so generously of their time and wisdom. A special debt of gratitude is due to both Mrs. Mary Louise Lewis and Mrs. Margrid Perry, to whose tireless and anonymous efforts much of whatever distinction this publication has attained is attributable. Finally, the Editor wishes to thank his readers for their faithful and continuing interest over the years.

MELVIN G. SHIMM.