
Administrative law is as old as government itself, yet it is still a remarkably young discipline. In the English-speaking world it was not distinguished from constitutional law until the mid-nineteenth century, and even then the honest study of administrative law was stifled by Dicey’s myopia. English and American lawyers have repaired the neglect, however, and in England alone there have appeared, during the last 25 years, at least six general texts, two major casebooks, and a number of specialist monographs devoted exclusively to administrative law, not to mention a number of other publications of which administrative law forms a part. Hence the appearance of a new general work may come as something of a surprise. It would be a mistake to assume, though, that Paul Craig’s new book constitutes merely a repetition of the existing literature; in fact it marks the commencement of a new phase in English administrative law.

When English lawyers finally ‘discovered’ administrative law they were faced with a vast mass of precedents and legislative instruments covering a wide variety of vaguely related issues. These had developed over the centuries in a haphazard fashion without academic guidance and devoid of doctrinal coherence. As with any new discipline, the first task was to reduce this chaos to some order. This task has now been completed. Among the numerous books which reflect these labours H W R Wade’s Administrative Law, now in its fifth edition (1982), is recognized by judges and lawyers alike to be the leading work. It has become a classic within the space of a few years, noted for its clarity, coherence and authoritative exposition. But these achievements have been gained at considerable cost. Certainty and consistency have been attained at the price of eliminating significant reference to most of the political and administrative facts which have determined the operation of the administrative process and the shape of administrative law. This is not to suggest that Professor Wade’s book is innocent of such considerations; indeed, the author reveals himself to be acutely aware of the broader political issues. But in order to maintain certainty he has had to make a choice from among competing political interpretations before proceeding to construct the framework of his exposition. In the process alternative views have been eliminated, and administrative law has been processed into the ‘lawyer’s law’ familiar to private lawyers and especially practitioners. Not only was this a necessary development for the disciplined analysis of administrative law, it is also a monumental achievement. But since the administrative process reflects many, divergent political views, such method of
exposition has failed to provide satisfaction for those public lawyers to whom public law is so inextricably linked to the political process that it may be interpreted only by continual reference to competing policies which underlie it.

Criticism has been levelled at Professor Wade’s book: it has been suggested that it is too complacent, that it underplays the political relationship between the courts and the other branches of government, that it gives insufficient attention to the administrative process, and that it overemphasizes the necessity to control abuse of power. The trouble with much of this criticism is that the alternatives are not that obvious. Nor are they so easy to produce. Hence Paul Craig’s book, which constitutes perhaps the first broad attempt to reformulate the framework of administrative law in England since J A G Griffith & H Street’s Principles of Administrative Law 5 ed (1973) (now completely outdated), deserves close attention.

The differences between the Wadean and Craigian approaches are manifest throughout Mr Craig’s book. The formal approach is abandoned in favour of a broad discussion of the vertical and horizontal allocation of power within the constitutional framework of the state. Emphasis is placed on the competing theories of jurisdiction and the degree of judicial choice that these theories permit. The problem of regulating discretionary power is discussed from a highly functional perspective. The historical analysis focuses not upon the jurisdictional disputes of earlier centuries but upon the rapid growth of social and industrial legislation during the nineteenth and twentieth centuries. Emphasis is placed upon the (usually underplayed) ‘fringe organizations’ (‘parastatals’ or ‘quangos’), which constitute an important facet of the public administration. Problems relating to administrative decision-making are cast within the context of decisional and organizational theory. A much more policy-oriented approach is adopted in the discussion of the rules relating to standing (locus standi) and public liability (in which field Mr Craig has already published widely). Throughout the book the author’s broader approach reasserts itself to challenge prevailing orthodoxy. A rewarding feature, too, is the frequent reference to American administrative law—a rare characteristic for an English textbook, and one that is particularly valuable in administrative law.

Mr Craig’s book is bound to prove controversial, especially where it ventures into allied disciplines, but the author has had to cast his net wide in order to reframe his subject. I believe that the gamble has paid off. Written in an informal, warm style, Administrative Law is refreshing, stimulating and challenging. Apart from a malnourished index, so spare as to be almost useless, and the odd proofing error (the Table of Contents predicts a section on ‘The Administrative System’, but the text itself contains a discussion of ‘The Administrative Process’ instead), the book has been well presented.
Since South African administrative law shares many of the practices, traditions and problems of its English counterpart, this work will be of great interest to local administrative lawyers.

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South African Criminal Law and Procedure. Volume I: General Principles of Criminal Law. By the late E M Burchell MA (Cantab) LLB (SA) LLD (Natal), James Scott Wylie Professor of Law, University of Natal, Pietermaritzburg, Advocate of the Supreme Court of South Africa, and the late P M A Hunt SC BA BA (Hons) LLB (Natal) LLM (Witwatersrand) LLD (Natal), Advocate of the Supreme Court of South Africa, Member of the Natal Bar. 2nd edition. By the late E M Burchell, J R L Milton BA LLM PhD (Natal), Professor of Law, University of Natal, Pietermaritzburg, and J M Burchell BA LLB (Natal) LLB Dip in Comparative Legal Studies (Cantab), Professor of Law, University of the Witwatersrand. Cape Town: Juta & Co Ltd. 1983. lxii & pp 512. Price R42 for hard-cover edition, R32 for soft-cover edition.

Soon after the publication of the first edition of this outstanding book—which I was privileged to review in this journal ((1970) 87 SALJ 471)—it established itself as a vital tool for the practitioner in the criminal courts, presiding officers, and professors and students of criminal law alike. ‘Burchell and Hunt’ became a household term, as was ‘Gardiner and Lansdown’ to the older generation.

I have not yet heard the story being told of Burchell and Hunt, though, that used to be told of its predecessor: A magistrate was said to have requested his court orderly to fetch him Gardiner and Lansdown. The orderly immediately left the courtroom and was heard to shout loudly, three times, in the adjacent corridor: ‘Gardiner and Lansdown! Gardiner and Lansdown! Gardiner and Lansdown!’ He promptly returned to the courtroom and dutifully reported to the magistrate: ‘The accused are not present, your worship.’

Much has happened since the first edition was published. As is mentioned in the preface to the second edition, an unkind fate has determined that neither of the original authors would live to see the appearance of the second edition. Peter Hunt was tragically killed in the prime of his life in 1976, and Exton Burchell, after a long and distinguished career, died in the middle of 1982. Important developments in relation to the general part of the criminal law have taken place since 1970. Not only have a number of highly significant