INTRODUCTION

In this day when government is growing and governmental services are expanding, we have experienced a swell in the power and persuasiveness of administrative bodies. Whether as an individual or as a member of some class, we feel daily the power and authority of the ubiquitous bureaucracy which has grown up as an integral part of our system.

This volume, Legal Problems of Administrative Practice, focuses on specific problems that have accompanied the growth of administrative bodies. Besides examining the traditional and evolving roles of administrative agencies, this volume also looks to the issues raised when these agencies deal with their clientele ... the individuals and groups within our society.

The volume begins with several articles dealing with the general nature of administrative law. The first article, California Administrative Procedural Due Process—Development, Interrelation and Direction, analyzes the requirements of procedural due process in terms of both the right to a hearing and the nature of the hearing required in California administrative law. The development of California law is traced, and the impact of federal cases on California is explored. Specific federal landmark areas discussed include: (1) Sniadach—the expansion of “special property,” (2) public assistance cases, (3) public housing, (4) public employment, (5) driver’s licenses, (6) parole revocation, and (7) prison discipline. The remainder of the article is an element-by-element discussion of specific rights (notice, counsel, etc.) as they are required to due process.

Countering Prejudice in an Administrative Decision deals with the situation where counsel has discovered a bias or prejudice which he feels is legally sufficient to call for the disqualification of the affected adjudicator participating in an administrative hearing. The means provided in California law for countering this bias or prejudice are surveyed, and their inherent weaknesses pointed out. Possible answers to the problem of countering bias or prejudice in administrative agencies are proposed. These include (1) permitting voir dire examination of adjudicators, and (2) as to the problem of the rule of necessity an independent judgment review or the use of a hearing officer under Cal. Gov’t. Code § 11517 to decide the case is argued for.

XVII
Parallel Administrative and Criminal Proceedings in California discusses the issue raised by litigants in California that due process is denied when a person is subjected to an administrative hearing where a criminal charge arising out of the same factual setting is pending. The central theme of the article is that both the courts and the litigants have confused the due process issues involved.

Good Moral Character of California Administrative Agencies—A Study of the Good Moral Character Requirement investigates the prerequisite of good moral character which may be used as a basis for denying a license to pursue over thirty-five occupations in California. In juxtaposition lies the societal need for the requirement and the constitutional limitations on its implementation. The California State Board of Education is used as a model for purposes of analysis.

Beginning with California Board of Medical Examiners, the volume shifts emphasis to the administrative regulation of commercial activity. The role of administrative law in this area has been more or less seen as traditional. The first article with this emphasis discusses the administrative structure of the California Board of Medical Examiners as it relates to the licensing and regulation of the health care occupations under the Board's jurisdiction. Specifically, the Board's system of delegating certain licensing and adjudicatory responsibilities to statutorily defined committees is examined. The article also briefly evaluates the operations of the board and concludes by making a general proposal to place all health care occupations under the Board of Medical Examiners.

Licensing of Real Estate Agents in California provides a narrative description of this occupational licensing system from the entrance procedures through license revocation. Statutes, regulations, case law, economic reality, and practical consequences are all blended into the article.

A New Look at the California Marketing Act of 1937 examines the history and operation of the California Marketing Act which attempts to raise and stabilize agricultural income by encouraging concerted marketing programs, delegating to the affected industry itself the responsibility of making and administering the necessary regulations.

XVIII
Equalization and California Property Tax Exemptions deals with the interaction between the courts in California and the administrative tribunals created by California constitutional and statutory law to administer property tax laws. The central focus concerns the doctrine of exhaustion of administrative remedies as applied to taxpayer challenges to denials by the county assessor of claimed exemptions from property taxation.

The third area of emphasis within the volume is the growing administrative control of the environment and of natural resources. The Development of the California and Federal Water Pollution Control Programs traces the emergence of federal and California legislation in this area. The theme of the article is that the Federal Government, in possession of a potentially all-encompassing pre-emptive power, must make the final decision as to the proper delegation of authority, power, and responsibility between the states in regard to water pollution control.

Regional Water Quality Control concentrates on the day-to-day practice and problems of proceeding under the Porter-Cologne Act on the regional level. In addition, the implementation of regional organizations in California, the major problems which have been encountered, and the most practical solutions presently available to solve these problems are studied.

Comments on the California Administrative Rule-Making Process and the Effect Thereon of the California Environmental Quality Act of 1970 argues that participation in the administrative process has been broadened when environmental questions are in issue. The article explores the rule-making or quasi-legislative portion of California's administrative process, analyzes California's Environmental Quality Act of 1970, and determines what effect the latter has or should have on the former.

The Justiciability of Necessity in California Eminent Domain Proceedings deals with the 1959 California Supreme Court decision of People v. Chevalier. The Court's reversal of a long-standing practice of permitting adjudication of the necessity question in eminent domain proceedings when fraud, bad faith, arbitrariness, or capriciousness is alleged is reviewed and criticized.

The final field of emphasis is on the effect of administrative agencies and law on people as individuals. The California Adult
Authority—Administrative Sentencing and the Parole Decision as a Problem in Administrative Discretion focuses on the procedure and criteria used by the Adult Authority in its role in sentence fixing and parole decision-making. The article concludes that the discretion vested in the agency is too broad; controls are suggested and discussed.

Due Process in California Prison Disciplinary Hearings explores the procedures of the California Department of Corrections and their relation to the Due Process requirement of the Constitution. San Quentin and the California Institute for Women were chosen for a study of the specific rules generated by their chief administrative officers. Statistical data was compiled at both of these institutions and was used to draw inferences regarding the adequacies of the present systems employed at these two institutions.

California's F.E.P.A. Remedies for Sex Discrimination—Are They Working? analyzes the 1970 sex discrimination amendment to California's Fair Employment Practice Act. The effectiveness of the F.E.P.C. in dealing with sex discrimination is explored and suggestions for changes are offered.

Adoption Agencies in California: Lack of Adequate Control? discusses the control of adoptions in California. The licensing of adoption agencies by the State Department of Social Welfare as well as the control of adoptions by this agency is explored.

California Welfare Fair Hearings: An Adequate Remedy? comments on the adequacy of the California welfare hearing as a remedy for aggrieved claimants, both applicants for and recipients of welfare grants. The article is divided into three areas: (1) Due Process and the Federal and California Regulations, (2) the Aid Pending Problem, and (3) specific limits on the use and utility of the fair hearing.

Tenure in the University of California—A Denial of Due Process examines the tenure procedure in the University of California. Specifically, the article covers the meaning of tenure, the process by which tenure is decided at the University of California, the scope of the appeal available to the individual who is denied tenure, and whether the entire procedure meets the constitutional requirements of due process.
The Fourteenth Amendment, Fundamental Fairness, the Probationary Instructor and the University of California—An Incompatible Foursome? discusses the procedures surrounding the dismissal of tenured and probationary instructors in public schools, with emphasis on colleges and the University of California. The recent due process challenges to the present, often airy, procedural safeguards now afforded the non-tenured are scrutinized in detail.

These articles, while they do not provide an exhaustive treatment of the field of administrative practice, raise issues of far-reaching application. It is hoped that this volume will provide not only an insight into the specific areas covered by the various articles, but will also provide its readers with a better perception of the workings of the administrative process.

Alan B. Carlson
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XXI