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A Vision of the Exchange

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I. INTRODUCTION

George Bernard Shaw once noted, "England and America are two countries separated by the same language."[1] Nowhere is the spirit of this remark more true than in the structure and operation of the two nations' legal systems. After the Seventh Anglo-American Exchange, which proved to be the most satisfying month of study of my legal career, I was able to see both the common structure and the different expressions of that structure in the English and American systems. Unlike Samuel Taylor Coleridge's vision of Xanadu, I saw no "caverns measureless to man" or "sunless sea."[2] And English, like American administrative law, was only occasionally

> A savage place! as holy and enchanted
> As e'er beneath a waning moon was haunted
> By woman wailing for her demon-lover!
> And from this chasm, with ceaseless turmoil seething, . . .
> A mighty fountain momently was forced. . . .[3]

Some of the actual differences were only of terminology—for example, the more elegant English "natural justice" for our "due process." Others reflected the different political methods our two nations have developed to express their common underlying vision of the free and just society. The written versus the institutional constitution, separated powers versus parliamentary supremacy, and the federated versus the traditional nation-state are principal among these. Still other differences have come from the kind of procedural variations—Aristotle would call them "accidents"—that characterize any two different institutions or systems either

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1. J. FURGUSON, INTERNATIONAL ENCYCLOPEDIA OF QUOTATIONS 427 (1978).
2. S. COLERIDGE, *Kubla Khan*, in MASTERPIECES OF BRITISH LITERATURE 290 (1895).
3. *Id.*

within or between countries. These types of differences abound between American states and among American agencies, and they also appeared to abound within the English system and between it and ours. Sometimes these differences are mere terminological choices, but sometimes they reflect a profoundly different allocation of real power and function.

A final category of differences has its origin in the different legal approaches of the two countries. These differences have developed from questions that both systems characterize identically, with similar terminology and similar political effect, but for which the two systems have chosen different solutions or answers. The Exchange may have been the most fruitful to our understanding in this last category of differences, not because it is the most important area, but because it is the area most amenable to improvement and to progress by lawyer-generated actions.

Lawyers as lawyers have little to contribute in determining which of the great constitutional choices of the two political systems is better over the long or even the relatively short terms, even if that were a meaningful question answerable with the historical data currently available. The different cultural, traditional, geographical, and social histories make comparative legal study of the two countries' different terminology, institutions, and political systems interesting, but not particularly fruitful or relevant from the vantage point of trying to improve a legal system by studying a similar one. Thus, this Article focuses on common issues for which the two nations' legal systems have adopted differing approaches. In most of these areas, the differences really are a matter of degree rather than a matter of sharply distinct alternatives. Any attempt to catch the real spirit of the Exchange, however, would be impossible without some attention to all of these differences, whether they are great or small, intentional or accidental, substantive or merely terminological.

II. Initial Observations

A. Grains of Salt

Two personal observations concerning the general theme of the Seventh Anglo-American Exchange initially may be useful to the reader. First, the formal focus and theme of the Exchange was

"Judicial Review of Administrative and Regulatory Action." While this title suggests a post-agency study of the administrative process or product, the Exchange in fact necessarily focused on the whole system, because judicial review of agency action is not really separable from general judicial review, agency policy, or even general governmental operation. In fact, it is not even separable from the general legal and constitutional expectations of the citizenry whose rights are at stake. Second, the term "administrative law" has become reasonably well defined in American, and apparently in English, legal parlance, but it is anything but well charted in its ultimate scope; its relationship to alternative systems for resolving public-private rights conflicts; its exact political dimensions; its relationships to general constitutional doctrines, both organic and judge-made; and its basic theoretical foundations. As a result, an implicit process of definition is at work. The Exchange was not considering a fixed object, but instead was making a series of comparisons based on the peculiar dispositions of its members—though as lawyers and judges this perhaps is what we do most of the time anyway.

B. The End of Administrative Law

In addition to these almost consensus views, I am convinced of the far less accepted view that the "administrative state," which has called forth the modern corpus of administrative law, is undergoing a fundamental and permanent metamorphosis. This change is coming about because the administrative state is creating rather than solving many of the problems of modern industrial society. It also is occurring throughout the free world in response to reconsideration of the major ideological assumptions upon which the administrative state's primary structure was built, which no longer are persuasive to thinkers across the political spectrum. Individuals on the right end of the spectrum believe that the administrative state stifles initiative, and that it is inherently inefficient as well as a threat to liberty. Those on the left have come to view the administrative state as reactionary, the natural captive of special interests, and the natural tool of classes hostile to equality or popular democracy. All of these thinkers generally appreciate the inefficiencies involved in the administrative process, the limits of expertise, the tendency of all decisionmakers to act in their own self-

interest, the weight of government spending, and the benefits of the marketplace and its innovative capacities.

This personal belief inevitably affects the perceptions I gained from the Exchange. If correct, it means that the Exchange must be viewed not as the study of some fixed object like the great Houses of Parliament at Westminster, but more as an archaeological dig, trying to unearth and to reconstruct a system for which the extent, condition, function, and present nature is partially uncertain. To the extent that the Exchange was studying two bodies of administrative law and procedure, it was comparing Troy and Babylon. The fundamental paradigm of the administrative state is no more permanent, and may be considerably less permanent, than that of the nineteenth century liberal state—the "nightwatchman state."

In light of these personal predispositions, a focus on evolutionary developments, such as whether the British system will continue to develop a more activist administrative review, and what the political and full legal consequences of such a trend will be upon parliamentary function, agency performance, social litigiousness, government spending, and other areas, will be particularly fascinating. Just as fascinating will be whether the American judicial activism of recent years will increase or decrease, and what the consequences will be for the structure of the judiciary and for the political accountability of administrative agencies. The extent to which administrative law will emanate from specific government policies also will be an interesting and significant area of study, as well as a particularly timely one given the tendency of the administrations of both President Reagan and Prime Minister Thatcher to make significant policy breaks with past administrations. In this context, a particularly interesting area of speculation involves potential social alternatives to administrative law that already exist or are in their genesis.

Although such speculation is intriguing, it could not be completely satisfied within the limited time and the incredibly full formal legal agenda of the Exchange. In any comparison of administrative law, even within one nation, only a partial social reality is viewed, and this problem is magnified when another legal system is involved—even one with deep fraternal and historical bonds. Despite these difficulties, however, comparative studies such as the

Exchange have much to contribute to our understanding in areas such as administrative law.

III. Areas of Comparison

While the two nations' administrative law systems have many differences, this Article focuses on four. Initially, the Article compares the tendency in the English system to rely on the spoken word to the tendency in the United States to rely on the written word, proceeding next to a discussion of the relative lack of concern in England, compared to the United States, about the tendency of judicial officials to become isolated from the rest of the legal community. The Article then examines the greater deference given by English courts to political authorities, and concludes with a look at the greater role that nonlawyers play in English administrative law. The insights gained from observation of these differences during the Exchange can contribute significantly to our understanding of American administrative law.

A. Orality and Legal Community

The degree of orality in the English system of judicial review of administrative decisions easily was the most striking difference between that system and the one in the United States. In the hearings witnessed during the Exchange, nothing was produced that was even remotely comparable to the veritable blizzard of paper produced in even a relatively minor administrative review procedure in the United States. The United States Claims Court, over which I currently preside, like the English courts visited during the Exchange, has a tradition of unlimited oral argument on dispositive motions, and the bulk of cases in the Claims Court are decided upon such motions. This orality, however, is different from the type of oral argument in the English proceedings witnessed during the Exchange. Oral arguments in the Claims Court usually run out after about two hours, and they are circumscribed by the written materials submitted. In fact, if new matters or issues are raised in arguments on dispositive motions, counsel usually are concerned enough to request an opportunity to submit post-argument briefs, sometimes even after trials following full pretrial briefs when no new legal or factual issues were raised at trial. Counsel in English proceedings, on the other hand, rely heavily on their oral

presentations, and are much less likely to place such heavy emphasis on written submissions.

The American legal system has become very distrustful of orality, perhaps reflecting the influence of our written constitution, combined with modern photocopying technology. The Freedom of Information Act,[4] the Federal Register system, and the ever-increasing formal record requirements in administrative proceedings all testify to a deep belief that if it is not in black and white, it is not true. Most American lawyers see an oral presentation in court or before an administrative tribunal as a useful opportunity to underscore, dramatize, and gain feedback, but they do not see it as the main event. In observing the proceedings in England, on the other hand, one really had a sense that the unlimited oral argument, without written briefs, was the main action.

Initially, I felt that this distinction merely reflected a difference in technical solutions in response to the legal need to inform the decisionmaker of the law and, to some degree, of the facts. Since my return and my move to the bench, however, I have amended my view. I now believe that the American system's stress on written input also reflects a more basic difference of legal philosophy and structure. I am not entirely sure about the nature of that difference, but I tentatively believe that it reflects the lack of a real legal community on the American side of the Atlantic.

Because the United States has so many centers of final legal authority in so many different areas—the various circuit courts on most of the matters that come before them; the agencies, boards, and commissions on most of the matters that come before them; and the Congress and the President in a large number of areas—the American legal system is only a "system" in the most abstract sense. The Supreme Court does not really govern that "system," but instead decides only the grandest and most important issues. This certainly does not denigrate in any way the role of that majestic institution; it merely reflects the fact that the Supreme Court's institutional role as special guardian of the Constitution does not encompass presiding over the whole legal community in a corporate sense. The Supreme Court bar is the nation's most prestigious, but it is only one of many separate and distinct legal

4. 5 U.S.C. § 522 (1982).

communities. What perhaps is amazing is the degree to which Chief Justice Burger became America's central legal figure—a status achieved in spite of the centrifugal institutional pressures of the American legal system, and primarily due to the force of his personality and energy rather than to the office he held.

The political role of the American judiciary and of the administrative process is another aspect of the more fundamental systemic difference that may underlie the system-wide American preference for written presentations. Alexis de Tocqueville noted this political role more than 150 years ago, when he wrote:

> The judicial organization of the United States is the institution which a stranger has the greatest difficulty in understanding. He hears the authority of a judge invoked in the political occurrences of every day, and he naturally concludes that in the United States the judges are important political functionaries; nevertheless, when he examines the nature of the tribunals, they offer nothing which is contrary to the usual habits and privileges of those bodies, and the magistrates seem to him to interfere in public affairs by chance, but by a chance which recurs every day.[5]

Under the United States Constitution, political controversies can and invariably do become legal battles—especially when they involve administrative agencies, which were established mainly as the result of hard fought political controversies.[6] This tendency leads to the adversarial, "no holds barred" attitude that is a characteristic of the American legal profession. At stake in judicial and administrative controversies are the most fundamental social and ideological conflicts of American society. Questions concerning environmental quality, abortion, racial discrimination, labor law, defense policy, taxation, federal spending, and many other issues of similar import, are seen in the minds of one or many factions as resolvable by an agency or by judicial adjudication. In this type of

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5. A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA 69 (H. Commager ed. 1947).

6. For a discussion of the political explanation for the creation of the ICC and the motives of the various interest groups involved, see D. BOIES & P. VERKUIL, PUBLIC CONTROL OF BUSINESS 15-24, 56-63 (1977); S. BREYER & R. STEWART, ADMINISTRATIVE LAW AND REGULATORY POLICY 23-24 (1979); S. BUCK, THE GRANGER MOVEMENT 11-15 (1913). *See generally* G. KOLKO, RAILROADS AND REGULATION: 1877-1916 (1965) (historical overview); I. SHARFMAN, THE INTERSTATE COMMERCE COMMISSION (1931) (detailed multi-volume history).

highly charged ideological battleground, the bar's identification with the faction it represents becomes greater than its identification with the abstract "legal community."

This judicialization of political conflict results in a premium being placed on the written rather than the spoken word. In a conflict situation in which ultimate values radically differ among the competing parties, no sense of community, common language, or common understandings exists to make the spoken word and unwritten rules work. In addition, the size and diversity of the American legal profession, the lack of a specific barrister "class," and the absence of anything equivalent to the Inns of Court, all militate strongly against significant reliance upon oral presentation of the primary legal or even factual case. These factors, as well as others, indicate that the difference in means of presentation in the two countries reflects a fundamental distinction between the two systems.

B. The Ex Parte Problem

A second significant difference between the English and American systems of administrative law and review, related to the first, is the lack of an excessive concern on the English side of our common legal world for the so-called "ex parte problem"—that is, the tendency of judicial officials to become isolated from the rest of the legal community. This is not to say that the notion of the judicial body as a formal setting, limited from ex parte contact on specific matters under review, is in any significant way different in England. The American tendency to import this approach into the administrative system, however, generally seemed lacking in England. The judicial isolation phenomenon was complained of during the Exchange by some English judges, but not nearly to the degree that it is complained of by many American judges. Of course, all data about the phenomenon is subjective, and it therefore should be considered with appropriate caution. To the extent that it is a real phenomenon, however, and to the extent that it is a problem rather than a desirable thing, the English system seemingly engenders less of the problem.

Several factors may explain this phenomenon. The Exchange conveyed a strong sense that, because of the size of the barrister community, the concern the American administrative law system

has developed with doing everything "on the record" is not a concern shared strongly in England. The excessive and progressive judicialization in the American system of administrative law has had among its principal effects the increased isolation of the bench from the general legal community. In England, on the other hand, the community centers around the Inns of Court, providing a constant, geographic contact between judges and the bar that is not really duplicated in the United States by bar associations, judicial conferences, or other episodic institutions.

This phenomenon relates closely to, yet contrasts with, another phenomenon observed on an earlier visit to England, which was devoted to a study of the differences between the career services of England and the United States. On this earlier trip, individuals of both countries seemed to sense that the lack of virtually any political appointees below the ministerial level in the British administration produced an isolation of the governmental system from the "winds of democratic change." Observers on this trip engaged in much debate as to whether this isolation was good or bad, but they all agreed that it existed. These observers also stressed that strong unionization of the career service through even the most senior ranks, along with a strong commitment to the concept of the governmental generalist as line manager, contributed to this isolation from the general political policy climate. The Anglo-American Exchange, by contrast, provided only a hint of an administrative process that was more isolated, and hence less political, than that in the United States. The system in England clearly is less political, but that lower level of politicization stems from many other forces, as well as from bureaucratic isolation.

C. Judicial Deference

A third major difference of approach between the two countries is the greater English judicial deference to the political authorities. While the language of judicial deference is common parlance in American as well as in English administrative law, the reality in the United States is quite different—or at least is more of a mixed bag. In many instances, the American judiciary has used standing, modification of Administrative Procedure Act procedural standards, and the substantive use of the "arbitrary and capricious" standard to challenge the policy preferences of departments of the

government, as well as the so-called independent agencies. In any individual case, the significance and amount of legal deference that will be given in the United States to an administrative decision with policy implications often is impossible to predict. A significant portion of the American bar sees the courts of appeals as the real centers of policymaking in areas as diverse as tax, communications, economic regulation, personnel policy, and pollution control.

The apparent English practice of real deference seems to be a reflection of several aspects of the English legal and political system, including the different constitutional position of its judiciary, the greater political mandate of its executive branch, its different selection process for judges, its different theory of limitations on state intervention into private rights, as well as its different type of bar. The last of these points essentially was discussed earlier in this Article, in the discussion of England's greater reliance on oral argument and the lesser isolation of its judicial officials from its legal community.[7] Although this Article has not discussed the lack of a written constitution in England, and the significantly lesser judicial power and resulting general increase in judicial deference that the lack of a written constitution creates, enough has been written elsewhere on that topic[8] that this Article need not retrace that path. The other aspects of the English system that lead to greater judicial deference, however, deserve a brief analysis.

Most Americans learn in school that, while the United States government is divided into three separated divisions, the English Parliament is supreme, encompassing all the great powers of government. If their schooling is somewhat sophisticated, the students also learn that the colonists' real problems with England in 1776 were not with the much-maligned King George III, but with the already sovereign Parliament. What is less emphasized in

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7. *See supra* notes 4-6 and accompanying text. One effect of the English bar's greater corporate or community sense, with particular importance to the question of judicial deference, is the greater procedural conservatism that the sense of community entails. Because members of any community are reluctant to go beyond the norms of that community, and because community standards move slowly by an intellectual averaging process, lawyers and groups wishing to use legal resources to attack political objectives in a real legal community such as England find much greater intellectual inertia than they would in a situation in which the freelancer or the "lawyer of fortune" is an accepted norm.

8. *See, e.g.*, Karlen, *Civil Appeals: English and American Approaches Compared*, 21 WM. & MARY L. REV. 121 (1979).

American schools, however, is that Parliament is not the equivalent of the United States Congress. Parliament has been an institution embodying the will of the executive, and the executive's political party, concerning major policy issues, ever since the Prime Minister first had to command a parliamentary majority. This situation inevitably creates a political force with a much more compelling political mandate than an American President ever could have, even with the support of a majority of Congress. Faced with this strong mandate, the judiciary in England tends to be less inclined to strike out on its own.

Differences in the method of judicial selection in both countries also have a reciprocal effect upon judicial deference. In contrast to federal judges in the United States, who in an overwhelming percentage of cases bring to the bench significant political credentials, new English judges seldom possess noticeable political credentials. Because English judges generally are not seen as policymakers, and their selection therefore is not a matter of policy or political concern, they have little mandate either to further or to stand athwart trends of the day.

While to denigrate the involvement of the political process in selecting judges in the United States has become somewhat fashionable in professional judicial literature, political selection is not a distortion of our system. To the contrary, it is exactly the way the former Englishmen who wrote the United States Constitution intended the system to be. Under their design, politics was not a word connoting something slightly less reputable than horse thievery; it was the art of government. Of course, law is one of the principal tools of this art. The founding fathers saw no more inconsistency in a judge being a man of political experience than they saw in a judge having scholarly or business experience. The net effect of this difference in the selection process, I would suggest, is positive. American judges are inclined to be less deferential to political decisions because most of them at one time have shared the mantle of power by which those decisions are made.

In commenting on the last distinction that contributes to the greater judicial deference in England, the different theory of limits on state intervention into private rights, my Exchange experience is only of marginal use. This distinction centers on the strong anti-interventionist natural law philosophy that underlies the

compromises that produced modern administrative law in the United States. According to this philosophy, government action at the federal level is always the philosophical as well as constitutional exception, to be justified only by some principled need and by an explicit constitutional sanction. Over the course of American history, these philosophical and political justifications have been the only coherent means by which one can understand the crazy quilt structure of the American administrative process. While I am less familiar with the philosophical foundations of the English polity, current English theory concerning the limits of state intervention, and hence the substantive core of administrative law, Adam Smith notwithstanding, seems to stem from Jeremy Bentham's utilitarianism.[9] That philosophy provides a significantly less supportive theory for challenges to the administrative branches of government than the natural law tradition underlying the American due process doctrine.

Even the sharpest legal attacks on the English administrative system focus upon technique and procedure. For example, the Right Honourable Lord Hewart of Bury, Lord Chief Justice of England, wrote this classic passage in 1929:

> When it is provided that the matter is to be decided by the Minister, the provision really means that it is to be decided by some official, of more or less standing in the department, who has no responsibility except to his official superiors. The Minister himself in too many cases, it is to be feared, does not hear of the matter or the decision, unless he finds it necessary to make inquiries in consequence of some question in Parliament. The official who comes to the decision is anonymous, and, so far as interested parties and the public are concerned, is unascertainable. He is not bound by any particular course of procedure, unless a course of procedure is prescribed by the department, nor is he bound by any rules of evidence, and indeed he is not obliged to receive any evidence at all before coming to a conclusion. If he does admit evidence, he may wholly disregard it without diminishing the validity of his decision. There is not, except in comparatively few cases, any oral hearing, so that there is no opportunity to test by cross-examination such evidence as may be received, nor for the parties to controvert or comment on the

9. *See* C. OSGOOD, THE VOICE OF ENGLAND 453-74 (1935).

> case put forward by their opponents. It is, apparently, quite unusual for interested parties even to be permitted to have an interview with anyone in the department. When there is any oral hearing, the public and the press are invariably excluded. Finally, it is not usual for the official to give any reasons for his decision.
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> To employ the terms administrative "law" and administrative "justice" to such a system, or negation of system, is really grotesque. The exercise of arbitrary power is neither law nor justice, administrative or at all. The very conception of "law" is a conception of something involving the application of known rules and principles, and a regular course of procedure. There are no rules or principles which can be said to be rules or principles of this astonishing variety of administrative "law", nor is there any regular course of procedure for its application.[10]

Lord Hewart's references to "law" and "justice" have the verbal flavor of natural law doctrine, but the thrust of the passage reflects a utilitarian concern with the procedural aspects of administrative law. Like other Exchange readings and experiences, the passage demonstrates little philosophical content that the English judiciary could use to support challenges to the administrative will, rather than the formal steps, of the administrative process.

D. Nonlawyers

A fourth, and final, major difference of approach between England and the United States is the use of nonlawyers in the administrative process.[11] Of course, most participants in the administrative process in both countries are nonlawyers, although Washingtonians such as myself sometimes find that hard to believe. With respect to those administrative jobs that Americans usually would classify as "legal," however, the Exchange revealed that many of these positions are not "inherently" so.

Anyone with some familiarity with personnel classification immediately will sense the danger of saying that a job is "inherently" legal or nonlegal, or anything else. Classification, however, is a

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10. G. HEWART, THE NEW DESPOTISM 43-44 (1929).

11. The role of nonlawyers currently has great relevance in the United States, as our legal system struggles with providing adequate representational resources to individuals in the so-called "mass justice" areas of immigration and benefits appeals cases.

necessity in large bureaucracies, in which pay, seniority, benefits, job functions, and employee management and discipline are necessary to make government work. Classification also is necessary to guard the public purse, to prevent cronyism and mass patronage, and to allow general principles of government management to control specific administrators. As a result, administrators are faced with the problem of determining the classification in which to put certain jobs with adjudicatory or representative functions. England and the United States resolve this question with a different mix, with England tending to use more nonlawyers in the process.

During the Exchange I had the strong sense that England, like the United States, had not made this choice consciously. One of the proceedings witnessed during the Exchange, for example, was an inquiry into the compulsory acquisition of William Morris' home as a public museum. It was quite a formal proceeding, with many of the interested individuals being represented by counsel. In the United States, such a proceeding at the federal level most likely would be conducted by an administrative law judge, or the political head of an agency, who most likely would be a lawyer. This inquiry, however, was conducted by an individual with a doctorate in architecture, who brought to the proceedings a very different perspective than a lawyer-judge would have brought. Whether the procedure was better or worse than legal adjudication is not clear, but the decision finally reached surely reflected the different approach, and therefore is worthy of comparative study.

In a similar proceeding, which involved an immigration question, members of the Exchange witnessed superb advocacy by an individual who was not a lawyer and who had no formal training in representational skills. In this case, the nonlawyer advocate was doing a job at the very core of lawyering. By itself, this one example of nonlawyer representation does not seem important, but the fact that this type of representation appeared to be the norm seems quite significant. Despite the prevalence of nonlawyer practice in the English administrative system, members of the Exchange detected no indication of any significant professional or public problem.

A meeting of the Council on Tribunals we attended during the Exchange brought to mind another matter worth some attention concerning the role of nonlawyers in the English and American

administrative systems. The Council on Tribunals, like the Administrative Conference of the United States (ACUS), which I chaired at the time of the Exchange, is to a large degree the official governmental body of expertise that acts as the procedural monitor of the whole system, a kind of procedural collective conscience. All the chairmen, and virtually all the members of ACUS, have been lawyers, whether practicing, academic, or judicial. During my tenure as chairman, I tried to interest nonlawyers in the agency, with little success. In contrast, the chairman of the Council on Tribunals at the time of the Exchange was not a lawyer and, as I understood the makeup of the Council, the bulk of its members were not lawyers.

This difference between these two bodies seems to reflect a fundamental difference in the perceived role of nonlawyers in the administrative process. American interest in and control of the administrative process, whether judicial or legislative, has been almost exclusively the focus of lawyers. With the exception of some work by economists and management-oriented political scientists, the literature and expertise on the administrative state in the United States is the exclusive domain of lawyers. Experiences gained during the Exchange, however, conveyed a strong impression that this was not so in England.

IV. Conclusion

Just as a famous statesman once said, "War is much too serious a matter to be entrusted to generals,"[12] one might say with equal force that questions concerning the administrative process are too important to be left to the lawyers. While in a very real sense lawyers are the trustees of our legal system, every citizen in a free society is the beneficiary of those sacred liberties crafted over a thousand years of Anglo-Saxon legal and political history.

The administrative state, as embodied in the administrative process, represents a massive challenge to the survival of those liberties on both sides of the Atlantic. The problems raised by the core questions of administrative law are not technical; they are questions of freedom, order, and justice that go to the root of what

12. G. Seldes, The Great Quotations 162 (1968) (attributed to Georges Clemenceau).

constitutes the good society. Only through the participation of the whole body politic in directing the course of that system can we hope for the survival of our libertarian traditions. To the degree that we depend upon lawyers to direct the course of the administrative process as special repositories of arcane knowledge about administrative law, we are lost.

The insights gained from the Seventh Anglo-American Exchange will enrich my professional career for as long as that career lasts. The wonderful companionship of every member of both teams, as well as the incredible hospitality and kindness received at every step on the English side of the Exchange, made every day in England a joy. I can only hope that on the American side our efforts were able to repay a small portion of that outpouring of goodwill.[13]

13. I also should note the enormous debt of gratitude that each member on the American side owes to Chief Justice Burger. No single individual in my lifetime has struggled more valiantly to remedy the various institutional defects in the American legal system than he.