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# Editor's Comments

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Justice Scalia introduced a speech printed in the 1989 *Duke Law Journal* with the statement that "Administrative law is not for sissies," by which he meant that it was so dull as to be dangerous. For Professor Brisbin, as discussed in his article in this issue, that speech raised important questions about not just the ubiquitous "*Chevron* doctrine," but the direction of the administrative law discourse. For me, it raised a more personal question.

Justice Scalia came to the Court as an administrative law teacher and scholar; he was chair of the Administrative Conference of the United States; a substantial part of his professional life has been devoted to the subject. Is it perverse, or merely macho, that he would have done so if he found it dangerously dull? His statement is certainly not extraordinary among the rest of us who have taken up administrative law because we would quickly second his observation to those outside. Why are we doing this to ourselves? Have we, for whatever reason, backed ourselves into this tiresome niche, are we such poor creatures that we have no alternatives, do we place some special value on dullness, or is there something in this discipline that we find interesting, even exciting, that escapes others and that we have failed to convey to the uninitiated?

I do not know which of these my students would ascribe to me, but I choose to believe that the reason for my commitment is the last. Administrative law is interesting, even exciting, to me—which leads to another introspective question: Am I bent in some strange way that this should be true? The alternative to an affirmative answer to this question is an assertion that administrative law is *in fact* interesting. Hence I am driven to make that case.

In the last several years, I have been involved in several projects, from treatise writing to casebook development to editing this journal, which have forced me to confront the question: What is administrative law about? The search for an answer to this question seems a fruitful beginning in discerning why it is interesting to me (perhaps us).

It is not temporizing to observe that administrative law is about many things. From the broadest perspective it is about the processes of government and, even more generally, human interaction in the pursuit of government. It is a legal system that structures the operational liaison among the various systems of human behavior related to government. This means that it incorporates the type of thinking relevant to many intellectual disciplines, such as law, political science, economics, cognitive psychology, management and more. Administrative law is the vehicle through which the law becomes the end-user of the work of these related disciplines. While as we "do"

administrative law we are often unable to employ all of these disciplines, we recognize that a meaningful answer often involves inquiries represented by these disciplines. Isn't that potential eclecticism inherently interesting?

Superimposed on the fundamental cross-discipline nature of administrative law is the various operational levels at which it affects individuals and society. Our *study* of administrative law has been unsatisfactorily focused on American federal administrative processes, but the *practice* of administrative law is equally important at the state and local levels. Moreover, becoming increasingly important are the administrative processes of the rest of the world; these processes have become important to administrative law practice and to those of us searching for answers to administrative law questions (and those with irrepressible curiosity). While adding yet more mind-boggling complexity to the subject, isn't that reach inherently interesting?

The excitement of administrative law derives from the contemplation of an infinite array of unique, often subtly unique, human logic systems. This is the charm of the best science fiction or mystery writing, but here the diverse systems exist in the real world and impact on the lives of real people. Administrative law is puzzle-solving with a stake, investigation of the idiosyncrasies of the human spirit with consequences. Not everyone likes puzzle-solving, but if one does then administrative law should hold many charms.

Administrative law's panoramic vision, however, can also become the source of disaffection. Its conglomeration of disciplines and ideas often makes the subject seem rambling and incoherent rather than intricate and eclectic. Hence, the basic challenge to administrative law as a discipline is to evolve techniques for managing diverse concepts and for facilitating communication among related disciplines. For these reasons, it seems constantly engaged in the rather desperate search for coherence.

As an enthusiast, it is natural that I should have settled on certain ordering devices. I rely on two analytical strategies as applied to the several administrative processes: the constitutional and legislative processes for empowering the bureaucracy, the internal decisionmaking processes, the control processes and the public access processes. One of these strategies allows me to order the inquiries regarding the array of substantive areas and the other to order inquiries regarding the myriad of different structures for decisionmaking behavior. These strategies provide the means for dealing with the intricacies of administrative law without becoming lost among the mass of information and concepts.

To manage the substantive inquiries, I perceive that administrative law has seized on issue categories. These issue categories allow it to capture the essence of wide-ranging substantive fields. Using these issue categories, administrative law can develop some common understanding and transfer thinking among the various substantive areas. The internal procedures for factfinding in one area, for example, may be used to evaluate factfinding procedures in another. The delegation of policymaking authority in an existing substantive program may guide a delegation for a new program.

Always with recognition of the uniqueness of each substantive field, these issue categories nonetheless facilitate communication and borrowing.

To manage the numerous legal devices for structuring human interaction in making decisions, administrative law has evolved universal decisionmaking models. These models evolve from two basic distinctions. The first is the familiar distinction between the processes for making individual decisions, "adjudication," and the processes for making group or policy decision, in the administrative context called "rulemaking." This distinction guided the drafters of the Constitution and has long been accepted in our theory of government. It quite naturally passed into our theory of the administrative process and has become well established. This distinction combines with the second aspect of our models derived from comparisons according to the Anglo-American trial model. The nature of the independence of an administrative adjudicator in one program, for example, can be used to evaluate the adequacy of the independence of adjudicators in another program. Although the dominance of the trial model creates unnecessary conceptual boundaries, our legal culture naturally drives administrative law toward this mode of analysis and, on the whole, it serves as a useful analytical device. Using the models derived from these distinctions, administrative law analyzes decisionmaking mechanisms as to whether individual adjudication or generalized rulemaking is appropriate and which elements of a trial should be employed in a particular program.

For me, issue categories and generalized models lay a coherent foundation for analysis even if they do not provide final answers. Having thus found some means (even if not the best means) for ordering the interplay of information and concepts, I find in administrative law an infinite supply of intricate puzzles where others might see only a disorganized morass. Thus ordered, administrative law then offers me the excitement of the search for solutions, excitement enhanced, as suggested above, by the fact that the solutions have real-world consequences. All this justifies, for me at least, the conclusion that administrative law is in fact interesting.

These observations about the nature of administrative law also guide my mission as editor-in-chief of the *Administrative Law Review*. The *Review* should be a vehicle for communication among the related disciplines and the *Review* should publish articles from a broad range of disciplines. The range extends from substantive expertise to legal theory to the operation of individual programs. Even though the individual legal fields have their own journals, the *Review* should accommodate an author who wishes to communicate with a broader audience about some substantive issue or program. Also, scholars in related nonlegal disciplines need the *Review* in order to communicate with the legal community. Therefore, one dominant goal of the *Review* must be to facilitate the exchange of information and ideas among all the components of the administrative law inquiry.