Preface to the Ninth Edition

We write this preface at a moment of challenge and stock-taking for the administrative state. The field of administrative law has never been more salient. The relationship between the judiciary and the president, deference, the president's authority over agencies (both executive and independent), the substantive and procedural standards for agency changes of course, the uses and abuses of agency guidance — these issues and others that are central to the course are the stuff of everyday news and political discourse.

This salience has effects both good and bad. One unhappy consequence is that the field of administrative law is presently more ideologically riven than at any time in recent, or perhaps living, memory. Ours is a fractious and divided age, and political disagreements feel ever more corrosive and disheartening. Relatively speaking, administrative law has generally avoided the political polarization that characterizes contemporary law and politics. It helps, of course, that administrative law is "meta." It is not about the substantive rules; the procedural and institutional emphases can forestall fights over what the substantive rules should be. But, as the field of election law illustrates so well, procedural choices have substantive consequences. An awareness of those consequences has led to new ideological battlelines being drawn regarding many issues in our field, including nondelegation, presidential authority, judicial deference, and rulemaking procedures.

Where doctrinal disputes have an ideological valence we have acknowledged as much. But we have tried to produce a book that is not ideologically skewed. Our aspirations for the field are that it might, and is especially well-suited to, avoid destructive and fraught ideological battles.

We had two other primary goals in preparing this edition. First, obviously, we have added a number of new cases and made interstitial updates throughout in light of developments in the five years since the 8th edition appeared. Second, we have meaningfully streamlined the presentation. Despite significant additions, the book is more than 60 pages shorter than the previous edition (which was itself 50 pages shorter than its predecessor). It is always easier to add than to cut, and as casebooks age they can become unwieldy. We have worked hard to make this new edition at least relatively crisp and user-friendly without sacrificing the depth and intellectual ambition that has always characterized the book.

The book's basic structure and coverage is the same. So is the basic goal: to study administrative law in a way that is informed by, and integrated with, an understanding of the issues of regulatory policy that lie beneath, and sometimes at the surface of, every doctrinal problem, however technical or abstract it may seem. Thus, our title is carefully chosen; the book does indeed cover administrative law *and* regulatory policy. In this way, we have sought to help the next generation of lawyers and law students with the endlessly fascinating problems

of administrative law — some of them old, some of them new, some of them now barely on the horizon.

We welcome any suggestions, corrections, or other feedback from readers.

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Preface to the First Edition

The traditional course on Administrative Law primarily concerns the delegation of power to administrative agencies, the procedures that the law requires them to follow, the legal requirements for obtaining judicial review of agency decisions, and the standards applied during that review. Critics of this course persistently and increasingly raise two important objections:

First, isn't such a course too abstract? Too remote from the substantive essence of agency decisionmaking? Aren't efforts to generalize across decisions arising out of many different agencies and substantive fields misleading? Don't those decisions often reflect no more than court efforts to deal with distasteful agency action on a case-by-case basis, perhaps masked by appeals to procedural principle? In a word, is it possible to understand these court decisions without understanding the substantive work of the agency?

Second, doesn't concentration on appellate court decisions mislead the student about what agencies do? The impact of judicial decisions on agency work may often be slight; and court review may constitute only a small part of the work of the lawyers who practice before the agency. Should future lawyers not be given a broader understanding of the many other factors that affect the impact that agency action has upon the world? See R. Rabin, Perspectives on Administrative Process 7-14 (1978).

This casebook represents an effort to preserve the essential virtues of the traditional course while adapting it to meet these objections. The materials are organized along traditional procedural lines, as updated to reflect the vast change that has overtaken this body of law in recent years. At the same time the book uses notes and problems systematically to survey regulation, as broadly conceived to deal not only with prices and entry, but also with health, safety, and the environment. It shows the interaction between substance and procedure; and (particularly in Chapter 8) it describes some of the bureaucratic and political factors at work.

Thus, this casebook might be used in two different ways. The teacher who wishes to emphasize the "administrative process" rather than "administrative procedure" might use this book to do so. It will introduce the future practitioner to the substance of much regulation, its interplay with procedural rules, the agency seen as a bureaucratic institution, and the basic steps for obtaining court review. The teacher of the traditional course might teach that course from this book as well, using the substantive notes and comments as supplementary aids.

We recommend that those emphasizing the substantive regulatory aspects of the book in their courses refer to the Teachers Manual, which is based on our teaching notes. The book's cases, questions, and problems are deliberately organized to elicit in class discussion the points and issues that the Manual contains.

The book provides sufficient material for a four-hour course. Those wishing to teach a three-hour course are advised to forgo selected substantive areas of regulation (such as utility rate regulation, food and drug regulation, FTC regulation of false advertising) or procedural topics (such as application of due process, privacy jurisdiction, Freedom of Information Act) or a combination thereof.

We wish to acknowledge the great debt we owe our predecessors, and we mention specifically Professors Clark Byse, Kenneth Culp Davis, Walter Gelhorn, and Louis Jaffe. Our work is obviously based upon their achievement. We particularly acknowledge our debt to Louis Jaffe, who, in mastering the intellectual problems of judicial review, laid the foundation on which we erect our own view of administrative law. We also acknowledge our use of the work of many others too numerous to mention, though we wish to point out that the discussion of the Federal Trade Commission in Chapter 8 draws upon that in G. Robinson & E. Gellhorn, The Administrative Process (1974), though we put that discussion to somewhat different use.

We have also dealt with the perennial problem of footnoting in casebooks as follows: All footnotes in a chapter are numbered consecutively from its beginning to its end. Thus footnotes belonging to cases within the chapter will not bear their original footnote numbers. The footnotes attached to cases are those written by the court unless the note itself specifically indicates that it was written by the editors.

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