THE LAW COMMISSION

(LAW COM. No. 20)

ADMINISTRATIVE LAW

SUBMISSION TO THE LORD CHANCELLOR UNDER SECTION 3(1)(*e*) OF THE LAW COMMISSIONS ACT 1965

Presented to Parliament by the Lord High Chancellor
by Command of Her Majesty
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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Commissioners are—

The Honourable Mr. Justice Scarman, O.B.E., *Chairman.*

Mr. L. C. B. Gower.

Mr. Neil Lawson, Q.C.

Mr. N. S. Marsh, Q.C.

Mr. Andrew Martin, Q.C.

Mr. Arthur Stapleton Cotton is a special consultant to the Commission. The Secretary of the Commission is Mr. J. M. Cartwright Sharp, and its offices are at Lacon House, Theobald's Road, London, W.C.1.

LAW COMMISSION

ADMINISTRATIVE LAW

Submission to the Lord Chancellor under section 3(1)(*e*) *of the Law Commissions Act* 1965

To the Right Honourable the Lord Gardiner,
the Lord High Chancellor of Great Britain

1. It is our statutory duty to keep under review all the law with a view to its systematic development and reform.[1] This necessarily includes, as was recognised in the prefatory note[2] to our First Programme, that important branch of law which regulates the exercise of powers and the discharge of duties assigned to public authorities and which determines the institutions, procedures and remedies incidental thereto. It is with this branch of law which is now generally described as administrative law that this Submission is concerned.

2. Following a widely representative Seminar on Administrative Law, organised by All Souls College, Oxford in December 1966, we published in July 1967 an Exploratory Working Paper on Administrative Law[3] for the purpose of obtaining comments on the scope of a possible item on administrative law in a future Law Commission Programme. We gave the Exploratory Working Paper a wide circulation and received replies,[4] in many cases making substantial and detailed proposals, from judges, public officials, practising and academic lawyers (individually and from their respective organisations), as well as from others with a specialised interest in this field. We have also taken into account views on administrative law expressed in recent years in legal and political literature[5] and at conferences[6] at which the Commission have been represented. The large response to our Paper and the other evidence of public concern with the problems which it raised clearly favoured the initiation of a study of administrative law as an undertaking of considerable importance and even of some urgency. We reached the conclusion that the accumulation of wisdom and experience represented by this evidence should be drawn to your attention. Accordingly, we make this Submission on our own initiative in discharge of the duty to provide advice and information to government departments which is imposed on us by section 3(1)(*e*) of the Law Commissions Act 1965.

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[1] Law Commissions Act, s. 3(1).
[2] Para. 5.
[3] Published Working Paper No. 13. See Appendix A to this Submission.
[4] The individuals and organisations who replied are listed in Appendix B. The replies are summarised in Appendix C.
[5] A selection of recent publications is set out in Appendix D.
[6] These included a further Seminar on Administrative Law organised by All Souls College, Oxford in April 1968 at which English, French and German judges compared the law and practice of their respective legal systems with reference to a number of specific cases.

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3. In our Exploratory Working Paper we formulated five questions dealing with different aspects of a possible inquiry into administrative law and invited views on the scope of such an inquiry in the light of these questions, which were as follows:

(A) How far are changes desirable with regard to the form and procedures of existing judicial remedies for the control of administrative acts and omissions?

(B) How far should any such changes be accompanied by changes in the scope of those remedies

(i) to cover administrative acts and omissions which are not at present subject to judicial control, and

(ii) to render judicial control more effective e.g., with regard to the factual basis of an administrative decision?

(C) How far should remedies controlling administrative acts or omissions include the right to damages?

(D) How far, if at all, should special principles govern

(i) contracts made by the administration,

(ii) the tortious liability of the administration?

(E) How far should changes be made in the organisation and personnel of the courts in which proceedings may be brought against the administration?

4. In the light of the comments and views we received on the Exploratory Working Paper and of our own consideration of the present state of administrative law, we seek in this Submission to answer the following questions:

(*a*) Is an inquiry into administrative law necessary?

(*b*) If necessary—

(i) what should be the scope of the inquiry,

(ii) by whom should the inquiry be conducted,

(iii) should different aspects of the inquiry be given a greater or lesser degree of priority?

5. We have reached the conclusion that an inquiry into administrative law is necessary. This view is supported by a considerable weight of opinion among those whom we have consulted.

6. We recognise that in recent years decisions of the courts have brought about notable developments and clarifications of this branch of the law; but there remains in our view a need to consider to what extent the courts would be assisted by a legislative framework of principles more systematic and comprehensive than has so far been evolved by case-law. Furthermore, there are procedural and institutional aspects of administrative law calling for consideration which may require changes beyond the scope of legal development by the courts.

7. It is also true, as we emphasised in paragraph 7 of Working Paper No. 13, that there have been important developments in administrative law effected by the Tribunals and Inquiries Acts 1958 and 1966 and by the work of the Council on Tribunals set up by the former Act. This legislation, based on the

recommendations of the Franks Committee,[7] was, however, primarily designed to improve the procedure of tribunals and inquiries, to set up in this connection the Council on Tribunals, to provide for appeals to the High Court (or Court of Session) from certain tribunals and, with certain exceptions, to remove restrictions on the exercise of supervisory powers by the High Court and the Court of Session. It was not concerned with the principles of law applicable to the supervision exercisable by the courts.

8. There is the further question whether the appointment of the Parliamentary Commissioner for Administration in 1967 has lessened the need for an inquiry into administrative law at least until there has been longer experience of the effect of his work. We would not wish to underrate the importance of the function performed by the Parliamentary Commissioner. In his investigations he has powers which in some respects are more flexible[8] than the procedures of courts and tribunals. And the effect of his conclusions may sometimes be more far-reaching, because of their appeal to Parliamentary and public opinion, than the enforceable decisions of courts and tribunals. We also bear in mind that the effectiveness of the Parliamentary Commissioner may be increased by his recent decision to widen his interpretation of " maladministration "[9] and by any future extention of his jurisdiction covering the extensive and important areas of administration e.g., that of local government, which at present lie outside the scope of his functions. Nevertheless, we think that the question whether the subject should have an enforceable remedy, within a clear framework of law, in respect of the legality of administrative conduct calls for separate examination. We regard the Parliamentary Commissioner as a valuable supplement to, rather than as a substitute for a comprehensive and coherent system of administrative law.[10]

9. With regard to the scope of the inquiry, we have reached the conclusion that, for the inquiry to be effective, its terms of reference should be broadly drawn and should cover all the matters raised by the questions set out in paragraph 2. Thus, it seems to us that a consideration of Question (A) (the form and procedures of existing judicial remedies for the control of administrative acts and omissions), which was approved virtually unanimously in the comments we received, is, as a number of commentators have pointed out, inseparable from a consideration of the scope of modernised procedures and remedies. This means, we suggest, including the subject matter of Question (B). With regard to Question (C), it appeared from a comparative Seminar

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[7] 1957 Cmnd. 218.

[8] Thus the Parliamentary Commissioner has complete access to persons and papers within the government departments concerned, who have not for this purpose the protection of Crown privilege. It is true that he may be prevented from the disclosure of documents or of information which in the opinion of a Minister of the Crown might be prejudicial to the safety of the State or otherwise contrary to the public interest (s. 11(3) of the Parliamentary Commissioner Act 1967) but he does not appear to be precluded from taking account of the contents of such documents or of such information in reaching his conclusions.

[9] See the Second Report of the Select Committee on the Parliamentary Commissioner for Administration (17th July 1968), paras. 9–17, the First Report of the Parliamentary Commissioner for the Parliamentary Session 1968–9 and paras. 16 and 17 of his Second Report for that Session (Annual Report for 1968).

[10] This view is supported by the experience of Scandinavian countries where there is both an Ombudsman and either specialised administrative courts or a developed system of administrative law within the ordinary courts. See *The Ombudsman*, 2nd ed., 1968, edited by Donald C. Rowat, p. 288.

held at All Souls College, Oxford, in April 1968,[11] that there was a need to consider the power of our courts to award damages against the administration. The administration, subject to the Crown Proceedings Act 1947, is as liable as a private person to an action for damages in respect of its acts or omissions; and wrongful administrative conduct, constituting breach of a statutory duty, may give rise to an action for damages, if the duty is one which confers such a right of action on the individual affected. But there are many types of administrative conduct which, although wrongful, do not fall within the categories of wrongs for which damages can be awarded against a private person and where there is no right to award damages for breach of a statutory duty; in such cases the courts have at present no power to award damages. Question (D) deals with matters on which much difference of view was expressed, both as to the need to examine the subject and as to the proper solution of the issues involved. Whilst Question (D) might be excluded or deferred, we would on balance be in favour of the views for or against special rules in contracts or torts in which the administration is involved being considered within the framework of a broad review. There is considerable support for examination of Question (E) and we would agree that any realistic review of administrative law should take into account the organisation and personnel of the reviewing bodies involved. We should add that we intended Question (E) as set out in Working Paper No. 13 to cover not merely the ordinary courts at present exercising a reviewing jurisdiction in administrative cases but also any other bodies which might be recommended for this purpose.

10. We think that, in view of the broad terms of reference which we would regard as desirable for the inquiry, the body carrying it out should also be broadly based. It should not, in our view, be the Law Commission alone nor indeed a body consisting only of lawyers. The reconciliation of the requirements of efficient government with the rule of law is so vital an issue that it calls for the judgment of a body which includes members with legal, administrative and political experience. We would, therefore, envisage an inquiry by a Royal Commission or by a committee of comparable status.

11. If such a body were set up, it would, of course, fix its own priorities and phase its work accordingly. We apprehend, however, that certain matters might form the subject of interim reports intended for early implementation on the basis of work done by a legal sub-committee. We have particularly in mind the complexities and deficiencies of the various remedies in this field; it might, for example, be possible to give early review to the differing scope and incidents of the prerogative orders, the declaratory action and the injunction[12] with a view to evolving as far as possible a single form of procedure for reviewing acts and omissions of the administration. On the other hand the matters raised by Question (D) in paragraph 2 above seem to us of less urgency and might, if necessary, be accorded a lower priority.

12. The Scottish Law Commission, whom we have consulted, have expressed general agreement with our views and particularly with our proposal that the inquiry we have suggested should be carried out by a Royal Commission or other broadly based tribunal. No serious criticisms have been directed against

[11] See n. 6 above.
[12] See e.g., H.W.R. Wade, Administrative Law, 2nd ed., 1967, pp. 100–7, 111–113, 127–134.

the procedures by means of which the courts in Scotland handle cases arising from administrative acts and omissions. These are somewhat different from and, in certain respects, simpler than comparable English procedures. It is, however, in the opinion of the Scottish Law Commission, essential that any examination of principles should be carried out upon a United Kingdom footing.

(*Signed*) LESLIE SCARMAN, *Chairman.*
L. C. B. GOWER.
NEIL LAWSON.
NORMAN S. MARSH.
ANDREW MARTIN.

J. M. CARTWRIGHT SHARP, *Secretary.*
17*th April* 1969.

APPENDIX A

N.B. This is a Working Paper circulated for comment and criticism only. It does not represent the final views of the Law Commission.

LAW COMMISSION

PUBLISHED WORKING PAPER No. 13

Exploratory Working Paper on Administrative Law

24th July 1967

1. In paragraph 5 of the Note prefacing our First Programme published in October 1965 we drew attention to the problems which arise in the reconciliation of the rule of law with the administrative techniques of a highly developed industrial society. We took the view that those problems would require further study before we were ready to propose any specific aspects of administrative law for inclusion in a Law Commission Programme.

2. On December 2nd/3rd 1966 a Seminar on Administrative Law was held at All Souls College, Oxford. Its intention was to bring together a number of lawyers and administrators in a critical examination of the present study of that branch of the law. In the light of the views expressed at that Seminar and of subsequent studies, it has appeared to the Commission that administrative law has strong claims for inclusion in some form in a future programme of the Commission as a subject for examination with a view to reform. The purpose of this working paper is to refer shortly to some of the criticisms of administrative law in this country which have been brought to the attention of the Commission at the All Souls Seminar and otherwise, and to consider what aspects of administrative law might be appropriate for inclusion in a future law reform programme.

3. The Scottish Law Commission were represented at the All Souls Seminar and we have consulted them before publishing this paper. They share our view about the claims of this branch of the law for inclusion in future law reform programmes, and whilst certain technical differences between the two legal systems may require some degree of separate study in the early stages of an inquiry, should the topic find a place in the programmes of the two Commissions a joint study would be our ultimate objective.

4. It is common ground that whilst the experience of the Parliamentary Commissioner for Administration will be of the highest importance in a topic which in the ultimate analysis is essentially concerned with the redress of grievances, the institution of that important office in no way diminishes the need for a review of the legal redress available in respect of administrative actions.

5. Four main lines of criticism of our administrative law have at this stage been brought to the attention of the Commission.

6. First, there appears to be a widely held feeling that the remedies available in the courts for the review and control of administrative action are in urgent need of rationalization. The procedural complexities and anomalies which face the litigant who seeks an order of certiorari, prohibition or mandamus have long been the subject of criticism, whilst the circumstances in which injunctions and declarations are obtainable would also appear to call for review. The law of judicial control, it has been argued, is at present at the mercy of a formulary system of remedies. The technicalities and uncertainties which mainly for historical reasons are a feature of the judicial control of public authorities under our legal system contrast sharply with the simplicity with which administrative proceedings may be started in other systems e.g., that of France.

7. Secondly, it has been suggested that in our system of pre-decision safeguards our concern for a judicial quality in inquiries and similar procedures, exemplified by the recommendations of the Franks Committee (1957 Cmnd. 218), may perhaps have created a tendency to concentrate upon " procedural due process ", i.e., the propriety of the procedure, whilst giving insufficient attention to " substantive due

process ", i.e., the quality of the decision reached. This is not to underrate the contribution to British public administration of the standards of " openness, fairness and impartiality " strengthened by the provisions contained in and made under the Tribunals and Inquiries Acts 1958 and 1966 and overseen by the Council on Tribunals, in particular those aspects of " openness " which require policies to be explained and reasons for decisions to be given. Nor is there any lack of awareness of the need to review and simplify the pre-decision and decision making procedures, as is evidenced by the recent White Paper on Town and Country Planning (1967 Cmnd. 3333). But it has been suggested by some, including distinguished administrators, that pre-decision safeguards which not infrequently impose great delays upon activities of social importance often fail to secure in practice any comparable benefit in the shape of an effective control over the administration. In particular, the control by our courts in relation to the issues of fact involved in administrative decisions has been compared unfavourably with that which applies in certain other systems. In this connection it has been suggested that the remedies available under the American Administrative Procedure Act in cases of administrative actions unsupported by substantial evidence might involve an elaboration of the records of our administrative agencies which might not be desirable on other grounds. Nevertheless this is an aspect of judicial control which may call for examination.

8. Thirdly, the opinion has been expressed that whilst the existence of administrative law as a separate topic has come to be recognised, we still lack a sufficiently developed and coherent body of legal principles in this field. Views on this matter vary considerably. It has been suggested that we need a body of law which, inter alia, makes the remedy for damages more widely available where administrative acts are found to be unlawful, and which recognises in the fields of contract and tort that the administration as a party is different from a private party and, as in a number of other countries, provides special rules of public law accordingly. It has also been suggested that there is a need to re-define for the purposes of public law many of the concepts of private law, e.g., negligence, including negligent misstatement, malice, fraud etc.

9. Fourthly, the view is held by some that in dealing with administrative matters our judges are sometimes unable to get near enough to the administrative decision and that one reason for this may be their lack of expertise in the administrative field. It is said that in the case of the French Conseil d'Etat, for example, the high degree of administrative expertise possessed by its judges has been one of the important factors which have given to the working of that Court the qualities which have been so widely admired. It is recognised that our system of judicial control has great effectiveness where it operates, and that it would be inappropriate to attempt to reproduce in this country features of the French and other systems produced by historical factors which have no counterpart in this country. But suggestions for reform have been made, ranging from the creation within the Privy Council of a specialized administrative court, the personnel of which would possess both judicial and administrative experience of a high order, to less radical suggestions for a greater degree of specialization within the existing general framework of the High Court.

10. Based upon the above-mentioned criticisms the following would seem to be some of the questions which might be covered by an item in a future programme of the Law Commission:—

(A) How far are changes desirable with regard to the form and procedures of existing judicial remedies for the control of administrative acts and omissions?

(B) How far should any such changes be accompanied by changes in the scope of those remedies (i) to cover administrative acts and omissions which are not at present subject to judicial control and (ii) to render judicial control more effective, e.g., with regard to the factual basis of an administrative decision?

(C) How far should remedies controlling administrative acts or omissions include the right to damages?

(D) How far, if at all, should special principles govern (i) contracts made by the administration, (ii) the tortious liability of the administration?

(E) How far should changes be made in the organisation and personnel of the courts in which proceedings may be brought against the administration?

11. It is however for consideration how far a law reform programme should at the outset attempt to cover in one inquiry the whole range of matters in which changes have been suggested. It is for example arguable that as a first step Questions (A) and (E) should alone be dealt with. On the other hand it may be thought that a consideration of the problems of remedies would require an examination of Questions (B) and (C) also. A third possible approach is that the problem of remedies is inseparable from the substantive law governing administrative action and that Question (D) also should be included.

12. The Commission invites the expression of views on the scope of an inquiry into administrative law which might be proposed for inclusion in a future law reform programme.

APPENDIX B

List of Individuals and Organisations who have commented on Published Working Paper No. 13

Association of Law Teachers
Association of Municipal Corporations
Bar Association for Finance, Commerce and Industry
Professor Max Beloff (University of Oxford)
Mr. D. J. Bentley (University of Oxford)
The Hon. Mr. Justice Blain
The Hon. Mr. Justice Browne, O.B.E., T.D.
Professor L. Neville Brown (University of Birmingham)
Mr. William Burgess
Chartered Auctioneers' and Estate Agents' Institute
Sir Edmund Compton, K.C.B., K.B.E. (Parliamentary Commissioner for Administration)
County Councils' Association
The Rt. Hon. Lord Diplock
Sir John Foster, K.B.E., Q.C., M.P.
Miss G. Ganz (University of Southampton)
Professor J. F. Garner (University of Nottingham)
General Council of the Bar
Government Departments (commenting collectively)
Mr. R. L. A. Hankey, C.B. (Deputy Treasury Solicitor and Legal Adviser to the Minister of Transport)
Sir William Hart, C.M.G. (formerly Clerk to the Greater London Council)
The late Sir John Hobson, O.B.E., Q.C., M.P., former Attorney-General
Sir Arthur Irvine, Q.C., M.P., Solicitor-General
Professor R. M. Jackson (University of Cambridge)
The Rt. Hon. Sir Elwyn Jones, Q.C., M.P., Attorney-General
" Justice "
Mr. A. M. Kelly (Clerk of the Wortley Rural District Council)
The Law Society
Mr. W. A. Leitch, C.B. (Chief Parliamentary Draftsman, Northern Ireland)
Mr. Ivor R. Million
Professor J. D. B. Mitchell (University of Edinburgh)
Mr. J. A. P. Morris
Mr. H. Wentworth Pritchard
Dr. M. N. Rendel (University of London)
The Rt. Hon. Lord Justice Salmon
The Rt. Hon. Baroness Sharp, G.B.E. (formerly Permanent Secretary, Ministry of Housing and Local Government)
Professor S. A. de Smith (University of London)
Society of Clerks of the Peace of Counties and of Clerks of County Councils
Society of Conservative Lawyers
Society of Public Teachers of Law
Mr. John Sparrow (University of Oxford)
Professor H. Street (University of Manchester)
Mr. A. Taylor (University of Kent)
Town and Country Planning Association
Transport and General Workers' Union
Professor H. W. R. Wade (University of Oxford)
Mr. W. T. Wells, Q.C., M.P.
The Rt. Hon. Lord Justice Widgery, O.B.E., T.D.
The Rt. Hon. Lord Wilberforce, C.M.G., O.B.E.
Dr. D. C. M. Yardley (University of Oxford)

APPENDIX C

Summary of comments received by the Law Commission in response to Published Working Paper No. 13

1. For reasons of brevity this summary does not attempt to deal with all the numerous and valuable points made by those who sent comments to the Law Commission in response to Published Working Paper No. 13. Its purpose is to convey a general impression of the range of comments expressed, and of the weight of support in favour of an inquiry into administrative law, in particular into the questions set out in paragraph 10 of the Paper. It analyses separately the comments received from members of the judiciary, from officers and officials of central and local government, from practising lawyers and organisations representing them, from academic lawyers and other academic specialists, and from organisations other than those representing lawyers or administrators.

2. In general the judges who have made comments were in favour of the institution of an inquiry into administrative law, a Lord of Appeal in Ordinary describing the topic as " probably the most important subject of possible Law Reform ". There were, however, differences of view as to the scope of the inquiry. Three judges favoured a comprehensive inquiry covering in substance all five questions set out in paragraph 10 of the Working Paper, but another view was that a start should be made with Questions (A) and (E) leaving Questions (B), (C) and (D) to be dealt with later. A Law Lord favoured first priority being given to the consideration of the control of those administrative acts of central and local government which cannot at present be questioned by any statutory procedure and for which the only remedy, if any, is by prerogative order or declaratory action. There were differences of view on the necessity for special rules applicable to contracts made with administrative bodies, and one specific dissent from the suggestion that there might be special rules applicable to torts committed by the administration.

With regard to the effect of the Tribunals and Inquiries Acts 1958 and 1966 and of the appointment of the Parliamentary Commissioner for Administration, a judge whose comments referred to his former professional experience " on both sides of the fence ", whilst paying tribute to the undoubted reduction of grievances as a result of these important developments, did not think that they could elminate grievances altogether or provide a substitute in the public eye for the independence of the courts.

3. The individual comments of past and present officers and officials of central government generally favoured an inquiry into Question (A) with some support for an inquiry covering the matters which arise under that question combined with those covered by some or all of the other questions raised by the Working Paper. The collective view of government departments whose comments had been invited was, however, that it would be premature to go beyond an inquiry limited to Question (A) and designed to eliminate existing procedural complexities and anomalies. A decision as to whether any wider review of procedural matters was required should be deferred until there had been sufficient experience of the effectiveness of the powers of the Parliamentary Commissioner for Administration. Any review of " substantive due process " referred to in paragraph 7 of the Working Paper (the expression is defined in that paragraph as " the quality of the decision reached ") would re-open the question to which Parliament had, in instituting the office of the Parliamentary Commissioner for Administration, given the answer that the right forum for the reconsideration of the merits of a decision was Parliament alone. A further review of this question would involve political and administrative as well as legal issues and the appropriate body for any such review would be a Royal Commission.

4. In the field of local government the Association of Municipal Corporations felt that there was a case for an inquiry into Question (A), but expressed doubt whether an inquiry into the other questions was justified. The Society of the Clerks of Peace of Counties and of Clerks of County Councils (with whose views the County Councils' Association concurred) favoured the inclusion of Questions (A) and (E) in a law reform programme (with Questions (C) and (D) included later on a low priority)

but on the apparent assumption that the examining agency would necessarily be the Law Commission itself (a misunderstanding shared by other commentators) would exclude Question (B) because it required consideration by a more widely based body. It considered that any examination of the extent and degree of control to be exercised over the substance of administrative decisions should be entrusted to a body such as a Royal Commission or a committee of the nature of the Franks Committee.

5. The views of practising lawyers and of organisations representing them all favoured the inclusion of Question (A) in any future inquiry into administrative law. But there was considerable divergence of view on what other matters should be included. The Bar Council favoured an initial inquiry into Questions (A), (B) and (E), a consideration of Questions (C) and (D) being postponed to a later date. The Law Society's Law Reform Committee favoured an initial inquiry into Questions (A) and (E), but stated that consideration of some aspects of Questions (B) to (D) incidental to Questions (A) and (E) would in all probability be found necessary in dealing with Questions (A) and (E). This was accompanied by the caveat that, if the examination was carried out by the Law Commission itself, only comparatively minor adaptations and extensions to existing remedies and procedures within the present constitutional framework would be appropriate; any more radical inquiry could perhaps be conducted by a Royal Commission or Special Committee.

More comprehensive or radical inquiries were favoured by others, including " Justice ", the Bar Association for Commerce, Finance and Industry and the Society of Conservative Lawyers. All three organisations referred to the limitations on the powers of the Parliamentary Commissioner for Administration, " Justice " expressing the view that his appointment, " important as his work may be within its own limits, is peripheral to the development of a comprehensive system of judicial review ". " Justice " favoured the creation of an administrative court with High Court status either as an independent court or as a Division of the High Court. The Bar Association for Commerce, Finance and Industry suggested that an inquiry in this field should not be limited to an examination of judicial remedies, but should consider the creation of further safeguards for the essential rights of the subject, possibly by the creation of an independent body possessing scrutinizing and advisory functions which were wider in scope than the functions of the Parliamentary Commissioner for Administration. The Society of Conservative Lawyers took the view that the issues involved in Questions (B) and (E) could only be satisfactorily solved by the institution of an Administrative Commission consisting of an investigating and a judicial division. The suggestion of one member of the Bar was the setting up of a system of administrative courts of first instance and appeal which would deal with most of the matters at present dealt with by separate tribunals.

6. In the comments made individually or collectively by academic lawyers and other academic specialists with an interest in administrative law, there was wide support in principle for a broadly based inquiry covering all the questions raised by the Working Paper. For the most part, however, where there were differences of view they arose on the choice of matters to which priority should be given if a comprehensive inquiry should prove to be impracticable. In the latter event the Sub-Committee on Public Law of the Society of Public Teachers of Law, would regard Question (A) as the most urgent matter (though some of its members considered that this question is inseparable from Question (B)) with Question (E) as the next most important topic.

The Association of Law Teachers considered that Question (B) is " very much at the heart of any inquiry ". It expressed the view that a comprehensive inquiry should cover all existing procedures for dealing with grievances otherwise than by the ordinary courts.

One Professor of Law who dissented from the views expressed by the Sub-Committee on Public Law of the Society of Public Teachers of Law, while agreeing that attention should be given to Questions (A) and (D), commented that lawyers in general put excessive emphasis on the judicial control of administration. Efficient

and speedy government tended to be unduly impeded by the application of judicial concepts, notably the principles of natural justice, to administrative decisions involving matters that were not truly justiciable.

7. Those commentators, who represented the views neither of lawyers nor of the administration, welcomed in principle the institution of an inquiry into administrative law.

APPENDIX D

A Selection of recent Publications on Administrative Law

Books on Administrative Law in the United Kingdom

J. F. Garner, *Administrative Law*, 2nd ed., 1967.

J. A. G. Griffith and H. Street, *Principles of Administrative Law*, 4th ed., 1967.

S. A. de Smith, *Judicial Review of Administrative Action*, 2nd ed., 1968.

H. W. R. Wade, *Administrative Law*, 2nd ed., 1967.

Other Publications on Administrative Law in the United Kingdom

Conservative Political Centre, *Rough Justice*, 1968.

Inns of Court Conservative and Unionist Society, *Let Right be Done*, 1966.

Louis L. Jaffe (Professor of Administrative Law, Harvard University), " Research and Reform in English Administrative Law ", [1968] Public Law 119, with replies by Professors J. D. B. Mitchell and J. F. Garner in [1968] Public Law 201.

Anthony Lester (Fabian Society), *Democracy and Individual Rights*, 1969.

J. D. B. Mitchell, " The Causes and Effects of the Absence of a System of Public Law in the United Kingdom ", [1965] Public Law 95.

J. D. B. Mitchell, "A Study of Public Law in the United Kingdom ", (1966) 15 *International and Comparative Law Quarterly* 133.

H. W. R. Wade, " Crossroads in Administrative Law ", *Current Legal Problems 1968* pp. 75–93.

Publications on Foreign Administrative Law

L. Neville Brown and J. F. Garner, *French Administrative Law*, 1967.

R. Warren Evans, " French and German Administrative Law: with some English Comparisons ", (1965) 14 *International and Comparative Law Quarterly* 1104.

Ernst K. Pakuscher (Judge of the German Federal Administrative Court and one of the participants in the Seminar referred to in note (6) to the Law Commission's Submission), "Administrative Law in Germany—Citizen v. State ", (1968) XVI *American Journal of Comparative Law* 309.

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