ADMINISTRATIVE LAW IN THE NEW CONSTITUTION*

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PART I. INTRODUCTORY

When in 1970 the Albino Z. SyCip Lecture Series was converted to a professorial chair, the organizers imposed this condition: "The holder of the chair shall endeavor to deliver annually a lecture or to publish an article which shall identify important trends in various sectors of the law as have emerged or are in the process of emerging." Subsequently, the Board of Regents attached a similar provision to every professorial chair established in the University thereby setting up a university-wide lecture and monograph series.

The process of stock taking and assessment in law is a continuing one. With the adoption of a new constitution introducing new concepts and institutions, the field of inquiry has broadened to include the shape of things yet to be.

Today's lecture will deal with the administrative law implications of various provisions of the 1973 constitution particularly those introducing parliamentarism and concepts of administrative law drawn from other legal systems.

A. *The Field of Administrative Law*

In this jurisdiction, administrative law is understood in different ways. In a limited sense, it is the law which deals with those agencies of government which by rule-making and decision interfere with private interests and business to promote the public welfare. In a broad sense, it includes matters affecting public officers and still more broadly it is understood to encompass every field of government action.

Even when used in the strict sense to refer to regulatory agencies, it would be difficult to pick out activities of the ordinary person today which are not affected by administrative law.

Thus, looking around this room one can pick out at random subjects of administrative regulation. The lighting and sound system suggests an

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enterprise whose rates, services, and transmission of power, were originally set by the Public Service Commission. The electrical installation, the structural features and architectural designs were prepared by professionals whose qualifications and authority to practice were passed upon by a board of their peers exercising regulatory powers.

The money earned, invested or spent, bank deposits and the interest they bear, come within the regulatory power of yet another agency.

Governments seek the most effective way of regulating the price of oil, so vital in this age, the rates, routes, passenger capacity and quality of service of the public transport system.

The Government Service Insurance System,[1] the Medicare Commission[2] and the Insurance Commissioner[3] are but a few agencies which promulgate rules, pass upon claims or regulate activities. The authority of the Comissioner of Internal Revenue[4] is something taxpayers would like to but never successfully elude.

Even leisure does not escape these regulatory powers. Thus, a Board of Censors[5] passes upon motion pictures whether telecast or projected in theaters while the Games and Amusement Board[6] has been constituted to make sure, among other things, that horse racing, jai alai or prize fights are not rigged.

Administrative law touches present day life in more ways than one may suspect. This may be through rules promulgated to implement legislation; through the decision of controversies; through routine acts of administration or a combination of these.

When the 1973 constitution is fully implemented and the social services and programs of a welfare state are carried through, the dispensing of benefits by administrative agencies will affect persons further — one day perhaps from the womb to the tomb.

This branch of law is concerned with not only the regulation of activities and the distribution of benefits, but it also provides remedies against an impersonal bureaucracy. In case of grievances against those entrusted with the enforcement of government policies, administrative law would indicate the remedies and provide the machinery for obtaining them.

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[1]Com. Act No. 186 (1936).
[2]Rep. Act No. 6111 (1969).
[3]Act No. 2427 (1915); Pres. Decree No. 612 (1974).
[4]Com. Act No. 466 (1939).
[5]Rep. Act No. 3060 (1961).
[6]Rep. Act No. 68 (1946).

B. *Growth of Administrative Agencies*

The need for speed, expertise, economy and flexibility in the regulation of various activities, the administration of benefits, and the prevention and settlement of disputes over them has led to the creation of a growing number of agencies with rule-making and adjudicative powers. For legislatures are not always in session, follow an elaborate process and take time to adopt legislation. Courts are passive entities, their procedures are slow and expensive. The administrative process is supposed to overcome these and makes possible effective and speedy implementation of government policies.

At a previous lecture, I dealt with the structure of government perceived to be emerging in the 1971 constitutional convention.[7] At that time the proposals to create constitutional commissions and other agencies, clothed with powers of regulation and adjudication over specific areas were so numerous that the resulting independent enclaves of constitutional power would have produced a government impossible to operate. What was revealed was the intention of the proponents to remove from the legislature the law-making power in specified fields, to carve up the president's power, and distribute it among the commissions, boards and other agencies proposed so that they would be beyond the power of either the legislature or the executive to touch. It was pointed out that if the proposals were adopted, the resulting structure of government would have been neither presidential nor parliamentary but a government by commission.

The 1973 constitution as finally adopted reduced the number of proposed constitutional agencies. But it is not simply the number of constitutional administrative bodies that has been changed. The more substantial changes affecting administrative law are those that accompany the adoption of a system of parliamentary government and policies accelerating the establishment of a welfare state.

C. *Administrative Law under the Presidential System*

The system of government under the 1935 constitution operated on the principle of separation of powers and its corollary, the non-delegation of power. Though by no means absolute, it was a principal consideration in the adoption of measures directed at the regulation of a range of activities, ranging from the issuance of fishing licenses to the use of atomic energy.

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[7]Cortes, "The Political Structure Emerging From the Proposals Before the 1971 Constitutional Convention; a Government by Commission", (1972) 33 p. Mimeographed.

The 1935 constitution structured around the principle of separation of powers, explicitly incorporated it in the main articles establishing the legislative, executive and judicial departments, by stating that: "Legislative powers shall be vested in a Congress of the Philippines",[8] "Executive powers shall be vested in the President of the Philippines"[9] and "Judicial powers shall be vested in one Supreme Court and in such inferior courts as may be established by law".[10] Judicial interpretation reinforced the view that each of these was a grant of plenary powers, not a mere enumeration of some. That constitution made the principle of separation of powers introduced in earlier organic laws, even stricter by prohibiting members of Congress from holding any other office or employment in the government without forfeiting their seats.[11]

Montesquieu and political theorists notwithstanding, the creation of agencies with a combination of executive, legislative and judicial functions became inevitable as the need for government regulation became increasingly necessary in a society grown more complex. At the beginning, constitutional objections to these agencies with hybrid powers were raised. These objections were met by statutory provisions for standards to guide administrative agencies in the exercise of delegated legislative powers. The ascertainment of the adequacy of these standards is a function of the courts. After locating them, the next function of judicial review is to prevent the agencies from exceeding their powers. The rule of law is upheld by reserving to the judiciary the power to pass upon agency action.

The jurisprudence on administrative law is made up of decisions involving challenges directed against the law creating the agency itself, or a review of agency decisions sought by one private party against another. Another category of cases coming under the topic "Administrative law" are disciplinary proceedings against public officers.

The individual who feels aggrieved by the act or omission of an officer, agency, board or tribunal performing regulatory or adjudicative functions or by some other public functionary has need for getting his grievances heard. Governments have put up machineries for handling this. They go by different names: Ombudsman, tribune, administrative management agency, Integrity Board,[12] PCAC,[13] PCAPE,[14]

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[8]Art. VI, sec. 1.
[9]Art. VII, sec. 1.
[10]Art. VIII, sec. 1.
[11]Art. VI, sec. 16.
[12]Ex. Order No. 318, s. 1950, 46 O.G. 1944 (1950).
[13]Presidential Complaint and Action Commission, Ex. Order No. 1, s. 1953, 49 O.G. 5262 (1953).
[14]Presidential Committee on Administrative Performance Efficiency, Ex. Order No. 306, s. 1958, 54 O.G. 4683 (1958).

PAGCOM,[15] or PARGO.[16] The government under the 1935 constitution through executive action created grievance offices and by legislation provided for the establishment of a Citizens Counselor[17] which was never given a try.

This treatment in broad terms of administrative law under the 1935 constitution is made to show the field within which it operated, the better to appreciate the administrative law implications of the change from presidential to parliamentary system in relation to other provisions in the 1973 constitution.

Legislation, jurisprudence, literature and practice run along the American pattern, the previous organic laws and the 1935 constitution having been drawn from American sources. They follow landmark cases like the *Panama Refining Company*[18] and the *Schecter Poultry Corporation*[19] cases which influenced to no small degree the constitutional convention of 1935 in explicitly giving the legislature authority to grant the President emergency powers, *i.e.*, to promulgate rules and regulations to carry out a declared national policy.

D. *Administrative Law in Parliamentary Government*

There are different variations of parliamentary government. The British differs from the French, from the German, the Italian, the Scandinavian, as well as the Japanese and the administrative law in these different types also vary.

Thus, the France *droit administratif* from which the term "administrative law" is derived has developed institutions unknown to the English. The constitutionalist A. V. Dicey's denial of the existence of administrative law in England, was pointed out by a number of publicists as a mistake in the appreciation of both the English and the French legal systems.[20] But more recent scholars say that A. V. Dicey was not necessarily wrong. What he was referring to as not existing in England was that aspect of French administrative law which places in a separate system of administrative courts, cases involving public officials in the performance of their functions. For in the French system, civil courts

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[15]Presidential Anti-Graft Committee, Ex. Order No. 4, s. 1962, 58 O.G. 1045 (1962).

[16]Presidential Agency on Reforms and Government Operations, Ex. Order No. 4, s. 1966, 62 O.G. 1161 (1966).

[17]Rep. Act No. 6028 (1969).

[18]Panama Refining Co. v. Ryan, 293 U.S. 833, 55 S.Ct. 241, 79 L.Ed. 446 (1935).

[19]A.L.A. Schechter Poultry Corp. v. U.S., 295, U.S., 55 S.Ct. 837, 79 L. Ed. 1570, 97 A.L.R. 947 (1935).

[20]WADE, ADMINISTRATIVE LAW 7 (1961); GRIFFITH & STREET, PRINCIPLES OF ADMINISTRATIVE LAW 3-4 (1963); SCHWARTZ, AN INTRODUCTION TO AMERICAN ADMINISTRATIVE LAW 1-3 (1958).

have no jurisdiction over these cases. They go to a hierarchy of administrative courts which has at its apex the *Conseil d'Etat.*

The French concept of separation of powers is not the separation of executive from judicial powers but of judicial courts from administrative courts.[21]

The British have no administrative courts separate from the judicial. Administrative law as a branch of public law has developed, in some ways similar to administrative law in the United States, but less judicialized in the sense that the composition of various tribunals have fewer, if any lawyers, and the procedure is more speedy and informal.

In the British welfare state, the operation of ministerial responsibility, the question hour, the laying before the Parliament of administrative regulations, as well as the establishment of the Ombudsman have resulted in the development of aspects of administrative law different from the American, the model from which the Philippine administrative law is drawn.

Thus in England because of the doctrine of ministerial responsibility, a minister is accountable to the Parliament for administrative action and under the British institution of the question hour, the appropriate minister may be called upon to answer for any official under his control. Administrative tribunals are placed under appropriate ministers. But the system is not without defects. For this reason the office of Parliamentary Commissioner, *i.e.,* Ombudsman, has been established. Unlike the Scandinavian prototype, however, the citizens do not have direct resort to the Ombudsman. They can only get their grievances looked into through a member of Parliament.[22]

E. *Delegated Legislative Powers*

Techniques to ensure that agencies given delegated legislative powers keep within the limits of the delegation vary. The British have developed a practice known as laying before Parliament under which the parent act may require that rules should be laid before Parliament; "shall be subject to annulment in pursuance of a resolution of either House of Parliament"; or should not be considered approved until positively approved by Parliamentary Resolution. The Statutory Parliament Act of 1946 prescribes the time table for these.[23]

In the Philippines, agency rules promulgated to implement or sup-

[21]SCHWARTZ, FRENCH ADMINISTRATIVE LAW AND THE COMMISSION LAW WORLD 6 (1954).
[22]Street, Justice in the Welfare State 116 (1968).
[23]WADE, *op. cit.*, p. 270-1.

plement a statute may be made subject to the approval of the Department Head or the President. Usually, their effectiveness does not depend on approval by the legislature. The validity of the rules can later be judicially challenged. This follows the American administrative law pattern.

A development in the United States of America similar to the British laying before Parliament and adopted in the Philippines is in the matter of delegated reorganization powers. The power to reorganize the executive departments was at one time made subject to the condition that either house of Congress could, by simple resolution, reject or change the reorganization plan within a certain period. If no action was taken within that time, the measure would go into effect. The Philippine Supreme Court in *Miller v. Mardo*[24] declared that this procedure for enacting a reorganization plan struck at the very root of the tri-departmental scheme of our democracy. If given the effect suggested, it "would be reversal of the democratic process required by the Constitution, for under it, the President would propose the legislative action by submitting the plan, rather than approve or disapprove the action taken by Congress. Such a procedure would constitute a very dangerous precedent opening the way, if Congress is disposed, because of weakness or indifference, to eventual abdication of its legislative prerogatives to the Executive..." Because of this decision, the latest Reorganization Law required the Reorganization Plans to be submitted to the Congress, for the latter to accept or reject *in toto*. Before the plans could be submitted to Congress, however, martial law was declared and a new constitution adopted.

One of the first acts of the President under martial law was the adoption in full of the integrated reorganization plan through Presidential Decree No. 1 and because the legislature does not in fact exist, the President has since exercised legislative powers.[25]

PART II. ADMINISTRATIVE LAW AND THE 1973 CONSTITUTION

The 1935 constitution employed the term "administrative" only once in a provision imposing a restriction on the activities of members of Congress, *i.e.*, they were prohibited from collecting any fees for appearances in administrative cases.[26] But other provisions of that Constitution had a bearing on the subject. Thus, the provisions on social justice, labor, the right to petition the government for redress of grievances, natural resources, public utilities, the operation of government enterprises,[27]

[24]112 Phil. 792 (1961).
[25]68 O.G. 7797 (Oct., 1972).
[26]Art. VI, sec. 17.
[27]Art. II, sec. 5; Art. XIV, sec. 6; Art. III, sec. 1(8); Art. XIII, secs. 1 & 6; Art. XIV, sec. 8.

among others, signalled the creation of more agencies with rule-making and adjudicative functions in addition to the usual administrative or ministerial functions. Two constitutional administrative agencies were established: the General Auditing Office[28] under the original constitution and the Commission on Elections[29] by a 1940 amendment.

The 1973 constitution has more numerous provisions bearing on administrative law: *First,* the provisions on social justice, social services and labor are expanded;[30] *second,* an absolute prohibition is imposed on any member of the National Assembly from appearing before any administrative body;[31] *third,* the constitutional commissions are increased to three and additional powers are conferred on them;[32] *fourth,* provision is made for two other agencies with administrative functions, *e.g.,* the National Economic and Development Authority and the Central Banking Authority;[33] *fifth,* the legislature is directed to establish a special court with jurisdiction over criminal and civil cases against public officers or employees including those in government-owned or controlled corporations;[34] and *finally,* provision for the creation of an office of the Ombudsman is also included.[35]

These provisions will have to be related to: (1) the Bill of Rights on the issuance of search warrant or warrant of arrest by "other responsible officer,"[36] on redress of grievances,[37] and the new provision on the right to information on matters of public concern and access to public records;[38] (2) the parliamentary system together with the adoption of the principle of ministerial responsibility and the institution of the question hour;[39] (3) the doctrine of judicial review[40] and the distribution of governmental powers; (4) the emergency powers provision;[41] (5) as well as the incorporation of the doctrine of sovereign immunity;[42] and (6) even more importantly, the government under the transitory provisions[43] and under martial law will have to be considered.

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[28]Art. XI.
[29]Art. X.
[30]Art. II, secs. 6, 7, & 9.
[31]Art. VIII, sec. 11.
[32]Art. XII.
[33]Art. XIV, sec. 1; Art. XV, sec. 14.
[34]Art. XIII, sec. 5.
[35]Art. XIII, sec. 6.
[36]Art. IV, sec. 3.
[37]Art. IV, sec. 9.
[38]Art. IV, sec. 6.
[39]Art. IX, sec. 2; Art. VIII, sec. 12(1).
[40]Art. X, sec. 5.
[41]Art. IX, sec. 12.
[42]Art. XV, sec. 16.
[43]Art. XVII.

A. *The Welfare State*

In these days of big business and big government, the average person left alone, may well be caught in the middle, incapable of coping with the pace and complexity of the society in which he lives. Giant economic empires have come into being whose field of operation encompasses not one state but the whole world. Regulation of powerful interests and business enterprises becomes as vital to the national well being and defense as standing armies. Equally essential is the protection of individuals in the uneven competition for a share in resources and the fruits of economic activities. Because of these, governments which in the past were thought to govern best when they governed least have taken on other functions and services. The parameters of governmental power have expanded and continue to do so. To afford the individual greater security and make available more social services, governments interfere in more areas of human activity. This may be done through existing departments, bureaus or offices or through agencies specially created with personnel handpicked for expertise in the particular field of regulation. Examples of these agencies are the Securities and Exchange Commission,[44] the Central Bank,[45] the Board of Investments,[46] the Oil Industry Commission,[47] or the Price Control Council.[48]

Besides provision to protect the individual against big business are systems of benefits, largesses, or subsidies administered and distributed by the state. The manner found most expeditious for handling claims, disputed or not, is by giving agencies charged with the responsibility of implementing these programs not only administrative functions but also delegated power to formulate rules and decide disputes. Thus are social security, workmen's compensation or medicare claims handled.

The design for a welfare state could be discerned in the 1935 constitution, but it is much more pronounced in the new one as an examination of its provisions will reveal.

1. The 1935 constitutional provision on social justice[49] and that authorizing the state upon payment of just compensation to expropriate land to be subdivided and sold at cost to individuals[50] proved to be insufficient for a speedy and efficient land reform program. The 1973 constitution in the declaration of principles expands the concept of social justice by providing for the regulation of the acquisition, ownership,

[44]Com. Act No. 83 (1936).
[45]Rep. Act No. 265 (1948).
[46]Rep. Act No. 5186 (1967).
[47]Rep. Act No. 6173 (1971).
[48]Rep. Act No. 6361 (1971), as amended by Pres. Decree No. 234 (1973).
[49]Art. II, sec. 5.
[50]Art. XIII, sec. 4.

use, enjoyment and disposition of private property, and introduces the idea of diffusing property ownership and profits.[51] The provision is reinforced by another which imposes on the state the responsibility "to formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil."[52] The implementation requiring as it does sufficient powers and flexibility for expertise, speed and fairness indicates yet another administrative agency exercising broad powers.

2. The 1973 constitution by providing that "the state shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare and social security to guarantee the enjoyment by the people of a decent standard of living"[53] indicates the areas in which the welfare state primarily operates. Social services have been undertaken and administered through agencies like the Departments of Education and Culture, Health, Labor and Social Welfare. For certain purposes, these perform rule-making and adjudicative functions. Agencies like the Medical Care Commission,[54] the National Labor Relations Commissions[55] or the Human Settlements Commission[56] have lately been specially set up. As the social services expand, the administrative machinery also grows and administrative rule-making and/or determination of claims correspondingly increase.

3. The 1973 constitutional provisions bearing on labor assures not only protection but also full employment, equal work opportunities regardless of sex, race or creed and regulation of relations between workers and employers.

It is in the field of labor that administrative law understood in its limited sense, *i.e.*, that branch of public law in which the executive branch of government performing quasi-legislative and quasi-judicial functions (by rule-making and decision) interferes with private rights to promote the public interest, has developed most rapidly. Under the 1935 constitution such agencies as the Court of Industrial Relations,[57] Wage Commission,[58] the Workmen's Compensation Commission[59] implemented labor policies. The 1974 Labor Code[60] in fleshing out the provisions of the 1973 constitution sets up the regulatory machinery for its implementation.

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[51]Art. II, sec. 6.
[52]Art. XIV, sec. 12.
[53]Art. II, sec. 7.
[54]Rep. Act No. 611 (1969).
[55]Pres. Decree No. 442 (1974).
[56]Pres. Decree No. 933 (1976).
[57]Com. Act No. 103 (1936).
[58]Rep. Act No. 6129 (1970).
[59]Act No. 3428 (1928).
[60]Pres. Decree No. 442 (1974).

B. *Other Areas of State Regulation*

The new constitution makes specific provision for state regulation of other activities, laying the basis not only for government intervention, but defining the extent to which it can go. Singled out for special treatment are mass media, telecommunication and educational institutions.[61] To implement the constitutional policy affecting them, the appropriate agencies will have to be given the responsibility of ensuring that the ownership, management and control which the constitution reserves to Filipino citizens remain with them.

The policy on natural resources of the 1935 constitution[62] is broadened in the new one to include in greater detail not only provisions on the patrimony of the nation but also on its economy.[63] The areas into which government regulation may enter have been extended to agrarian reform and the reserving to Philippine citizens or corporations certain traditional areas of investment.

The new constitution thus provides basis for the exercise of broad regulatory powers in additional areas through agencies already existing as well as new ones which it might become necessary to create.

C. *Constitutional Commissions*

The 1935 constitution included two constitutional administrative agencies.[64] The 1973 constitution retains these and expands their powers. It also creates a new one, the Civil Service Commission.[65]

When the new constitution becomes fully operative, of the three constitutional bodies, the Commission on Elections will have the most extensive adjudicatory powers.[66] Although not part of the judiciary, it has by explicit constitutional provision been made the sole judge of all contests relating to the elections, returns, and qualifications of all members of the National Assembly and elective provincial and city officials; it retains the power to decide, save those involving the right to vote, administrative questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and the registration of voters. By legislation, its powers extend to referendums.

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[61]Art. XV, secs. 7 & 8.
[62]Art. XIII.
[63]Art. XIV.
[64]General Auditing Office and Commission on Elections.
[65]Art. XII-B.
[66]Art. XII-C.

D. *Other Agencies Referred to in the Constitution*

The highest category of administrative agencies are those established by the Constitution. Except through amendment of the fundamental law they cannot be abolished, nor can their organization be changed, or their constitutional powers diminished.

Another category of administrative bodies are those which the National Assembly is directed to create. These are the National Economic and Development Authority[67] to be headed by the Prime Minister, a central monetary authority,[68] an office of the Ombudsman[69] and a special court to be known as *Sandiganbayan*.[70]

1. The NEDA, already in existence long before the 1973 constitution,[71] is transformed by the new constitution into the highest planning authority. With the Prime Minister as chairman, and representatives of local governments, the private sector, and other public agencies as members, it is given the responsibility of preparing a continuing, coordinated and fully integrated social and economic plans and programs and to identify the traditional areas of investment which in the national interest should be reserved to Philippine citizens or corporations.

A reorganized NEDA[72] (the acronym is retained but the designation of the office has changed slightly with the insertion of the conjunction "and" to the National Economic Development Authority) operates under the 1973 constitution with the President as chairman.

2. By constitutional fiat the Central Bank will continue to function until a central monetary authority shall have been established.[73] This agency is given the responsibility of "policy direction in the areas of money, banking and credit", supervisory authority over the operations of banks and such regulatory authority as may be provided by law over the operations of finance companies and other institutions performing similar functions.

The sensitive character of the area regulated by this agency needs no elaboration. It touches the pocket of every person in the country and a significant number outside. Its role in the national economy and development is far reaching. The statutory basis for the Central Bank's re-

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[67]Art. XIV, sec. 1.
[68]Art. XV, sec. 14.
[69]Art. XIII, sec. 6.
[70]Art. XIII, sec. 5.
[71]Pres. Decree No. 1 (1972).
[72]Pres. Decree No. 107 (1973).
[73]Art. XV, sec. 14.

gulatory powers over money, banking and credit have by this constitutional provision received not only confirmation but reenforcement.

The agencies discussed were either existing in 1973 or their membership and functions expanded. But the 1973 constitution provides for two other agencies not only with new titles but with functions drawn from foreign sources. These are the *Sandiganbayan* and the *Tanodbayan* or Ombudsman.

E. *Grafts on Philippine Administrative Law*

Horticulturists have succeeded in producing trees bearing different varieties of fruit by engrafting on one tree branches from other varieties.

Should the different provisions of the 1973 constitution bearing on administrative law be implemented, the result may well be French, Scandinavian and English features engrafted on the Philippine adaptation of American administrative law.

1. The 1973 constitution provides for the creation of a special court to be known as *Sandiganbayan* with jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government owned or controlled corporations, in relation to their office.[74]

Earlier, in discussing French administrative law, reference was made to the system of administrative courts with special jurisdiction over public officials against whom complaints had been filed for acts or omissions related to their public functions. These courts, however, exist as a separate hierarchy with the *Conseil d'Etat* at the top. At no stage do cases before the administrative courts go to the civil courts. The influence of this system which obtains in European and other countries, may be discerned in the new constitution. The innovation sought to be introduced is that of a special court with specified jurisdiction. But unlike the French system the *Sandiganbayan* shall be part of the judiciary.

2. The office of the *Ombudsman* is another borrowing. The term is Swedish for representative or agent of the people or a group of people. In English it has been translated to "parliamentary Commissioner".[75] In many parts of the world it is the answer to the problem of expanded bureaucracy. The *Ombudsman* is a "citizen's defender, grievance man, or public watchdog." Though the idea behind the establishment of the office may be the same, the powers vary in the different countries which have adopted it.

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[74]Art. XIII, sec. 5.
[75]ROWAT, THE OMBUDSMAN PLAN 2 (1973).

In Sweden, the *Ombudsman* is a constitutional officer, a representative of Parliament but independent of it. He "supervises the observance of laws and statutes" by the courts and by public officials and employees either on complaint of private parties or at his own initiative. He has no power over cabinet ministers, nor jurisdiction over government corporations or local government.

Norway's *Ombudsman* has no jurisdiction over the courts; he oversees national administrative agencies and persons in government service. A 1954 statute created a Parliamentary Commissioner to deal with both the civil and military central government administration exclusive of the courts, but including ministers, civil servants and all other persons acting in the service of the state. In 1962, it was broadened to include local officials.[76]

It was after Denmark established the *Ombudsman* that the rest of the world took note of this Scandinavian institution in existence in Sweden for about a century and a half. New Zealand adopted the *Ombudsman* concept in 1960 with the *Ombudsman* as Parliament's man and not of the executive. He had the power to investigate acts relating to administration including any recommendation made to a Minister of Crown, but not acts of the minister or the military. The schedule annexed to the Act and listing the matters properly within the concern of the *Ombudsman,* omits administrative tribunals.[77]

The British Parliamentary Commission Act of 1967, was sponsored by the government "as a measure designed to humanize administration." The parliamentary commissioner of Ombudsman has power to investigate and report only on complaints submitted to him, through members of Parliament. His jurisdiction covers the exercise of administrative functions of enumerated departments and authorities, but does not extend to discretionary functions nor to a long list of enumerated exceptions.[78]

The function of *Ombudsman* may be lodged in a single official, as in Denmark or in several, as in Sweden where there are three. The original Swedish *Ombudsman* and its transplanted versions indicate the adaptability of the institution to felt needs. Thus, the Ombudsman may have jurisdiction over courts as in Sweden or courts may be outside its jurisdiction as in Denmark, Norway, and New Zealand. The *Ombudsman* may have power over both civil and military officials or the military may be placed under another Ombudsman as in Sweden; or only a military Ombudsman may be established as in Germany. The Ombudsman may inves-

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[76]GELLHORN, OBUDSMAN AND OTHERS; CITIZENS' PROTECTORS IN NINE COUNTRIES 159 (1967).

[77]*Ibid.*, p. 103.

[78]Stat. Instr., 1967, No. 485, 28 H.

tigate on his own initiative or he may act only when a complaint is made through a member of the Parliament. His function may be to investigate, report and publicize, or he may prosecute.

A common feature of the Ombudsman in these different countries is that it is the parliament's defender of the law. Acting as watchdog for the people's protection against the bureaucracy, the Ombudsman is appointed by Parliament and reports to it. In some countries, like Finland and Sweden the executive continues to have his own defenders of the law, with more or less functions than the parliament counterpart.[79]

The concept of Ombudsman began to take hold in the Philippines after World War II. Grievance offices were set up by Presidents, starting with the Integrity Board[80] of President Quirino. A legislative answer to the need for taking up the citizen's cause against bureaucracy was Republic Act No. 6028. This sought to establish the office of the Citizen's Counselor to promote higher standards of efficiency and justice in the administration of laws as well as to better secure the right of the people to petition the government for redress of grievances. The jurisdiction of the office was to extend to administrative acts of a government agency, *i.e.*, to any governmental entity, department, organization or institution, and any officer, employee or member thereof acting in the exercise of official duties. Excepted were the President, the members of the Senate and House of Representatives, and judges of any court. Since they were not among the exception, all others, including the members of the cabinet as well as the military could be understood as coming within the jurisdiction of the Ombudsman, and for that matter constitutional officials like the Auditor General and the Chairman and members of the Commission on Elections. In the case of the last two, however, the constitutionality of the application was suspect because an office of statutory creation was being given oversight over independent constitutional officials.

The Citizens Counselor became no more than an office in blue print because Congress merely "authorized the appropriation" of ₱500,000 out of the available funds of the National Treasury. It was for the President to program the amount to get the office in operation. Since this was never done, the act was not implemented, hence, the statutory grievance machinery provided was not given a trial.

The grievance machinery established by Presidential action and given power to investigate and make recommendation did not have the effectiveness nor the prestige of the Ombudsman. These grievance offices

[79]ROWAT, *op. cit.*, p. 420.
[80]Ex. Order No. 318, s. 1950.

were under the President's control, performed only functions assigned, and could at any time be abolished by him. The Citizens Counselor being a statutory creation could not have been abolished except by congressional action, but the office being in the executive department was subject still to the President's power of supervision and control.

The principle of separation of powers and the detailed provisions in the 1935 constitution about appointment and the allocation of the functions of government to the executive, legislative and judicial branches did not permit the setting up of an independent legislative office with assigned functions and responsibility to the legislature. Hence, the Citizens Counselor, as overseer was responsible to the President and was subject to his control.

F. *Possible Effects of the Constitutional Changes*

Has the adoption of the parliamentary system under the 1973 constitution changed all these?

When the system of government provided in the 1973 constitution begins to operate, with the Prime Minister assisted by the cabinet performing executive functions but responsible to the National Assembly and the separation of executive and legislative powers virtually disappears, administrative law concepts and practices developed under the 1935 constitution will have to be reexamined.

The subject matter of administrative law in the Philippines today embraces government regulation of private enterprise, the administration of benefits or privileges whether coming from public sources or established by statutory requirement, and matters pertaining to public officers including their accountability. This last is the result of the lack of clear-cut distinction between the special field of administrative law as understood in the United States to be limited to regulatory agencies and the area of public administration.

The provisions of the 1973 constitution bearing on administrative law indicate that:

1. Regulation of business will continue and rise to a greater degree as a result of the constitutional policies on equitable diffusion of property ownership and profits, the expanded provisions on labor, the provisions on national economy and the patrimony of the nation, land reform, special provisions on specified enterprises, the authority in time of national emergency to take over and direct the operation of privately-owned utilities or businesses affected with public interest and the broader emergency powers which may be vested in the Prime Minister.

The regulatory technique may be through agencies which have developed with more or less independent powers, like the Securities and Exchange Commission and the Central Bank. These issue rules and regulations with the force of law and decide controversies, subject to judicial review.

Another regulatory technique, which is a feature of the British system, is the nationalization of enterprises and the setting up of state corporations. The 1973 constitution furnishes sufficient bases for this, in the provisions on emergency take over without provision for payment of just compensation, or the one on the operation of industries to serve the national welfare and defense.[81]

2. The administration of benefits afforded by the welfare state in the areas of health, education, housing, employment, welfare and social security will increase rather than diminish. In these fields the individual interests are directly affected and on the speedy and fair disposition of their claims would depend the success and effectiveness of a program of social service.

3. The growing interference of government in private activities can be expected to be accompanied by a proportionate increase of grievance against public officials. The 1973 constitution makes detailed provision for rendering public functionaries accountable.[82]

4. Administrative agencies may become even more potent with the grant of the power to issue warrants of arrest and search warrants which under the new constitution may be issued not exclusively by judges but by "such other responsible officer as may be authorized by law."[83] The Supreme Court decisions on the issuance of administrative warrants of arrest preliminary to an investigation for deportation will have to be reviewed, as well as the whole field of administrative search warrants. These are sensitive areas and the serious consequences of the grant to administrative agencies of the power to issue warrants of arrest or search warrants deserve serious consideration.

G. *Legal Control of Government*

In relation to big government, the average person stands as disadvantaged as he is in relation to big business. Because of this, provisions are made to ensure that complaints against bureaucracy are promptly and effectively handled.

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[81]Art. XIV, secs. 6 & 7.
[82]Art. XIII.
[83]Art. IV, sec. 3.

There were proposals in the 1973 convention to include the office of Ombudsman in the constitution. This did not push through. Instead the National Assembly is directed to establish a special court to be known as *Sandiganbayan* and the *Tanodbayan* or office of the Ombudsman.[84]

Before these offices are created it would be useful to determine how best their purposes may be achieved, what functions they should be given, what organization should be put up and what provisions to make so that the independence of the offices may be assured. The experience of other countries would be helpful, but local conditions and problems will need to be considered.

H. *Parliamentarism and Administrative Law in the New Constitution*

What effect would parliamentarism have on administrative law? As previously mentioned, in England, exercise of subordinate legislative powers is subject to a laying before Parliament. Instruments covered by this requirement may be any of these types: (1) those laid before Parliament, but are not subject to any other procedure; (2) those laid before Parliament which cease to have effect if either House by resolution annuls it; and (3) those which do not take effect unless approved by Parliament.

Subordinate legislative powers exercised by administrative bodies under the 1935 constitution went into effect without further legislative action. However, in the one instance previously referred to, reorganization becoming operative unless either House by resolution acted within a specified period, the Supreme Court declared the scheme violative of the constitution since it permitted an abdication of legislative powers to the executive.[85]

In the new constitution, the Prime Minister and a majority of the cabinet as members of the National Assembly and accountable to it will participate actively in law-making. With executive and legislative powers merging, objections to delegating legislative powers to the executive will cease to have application. However, judicial review continues to be a basic institution in the Philippine constitutional system and the irreducible minimum of the Supreme Court's jurisdiction is provided in the new constitution.[86] The rule against non-delegation would therefore continue to apply in case the subordinate legislative authority conferred on administrative agencies is so broad as not to provide sufficient guides for an agency's actions. Want or excess of jurisdiction would be basis for invalidating administrative action.

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[84]Art. XIII, secs. 5 & 6.
[85]Miller v. Mardo, *supra*, note 23.
[86]Art. X, sec. 5.

Under the presidential system established in the 1935 constitution, the President had control of all executive departments, bureaus, and offices.[87] Whether or not this control extended to the exercise of legislative and judicial functions by administrative agencies, was never clearly established. For agencies like the Securities and Exchange Commission or the Public Service Commission or the Court of Industrial Relations (when these last two existed) were under the administrative supervision of an executive department, but performed judicial as well as legislative functions.

The new constitution places the exercise of executive power in the Prime Minister with the assistance of the cabinet.[88] The members of the cabinet as head of ministries are subject to the Prime Minister's control.[89] The 1935 constitution vested executive powers in the President and gave him control over executive departments, bureaus and offices. Notwithstanding the change in language, no real difference can be seen between the power of control which the President enjoyed under the 1935 constitution and the control over ministries provided in the new one, except for the factor of responsibility introduced in the latter, making the Prime Minister answerable to the National Assembly and ultimately to the people.[90] The question hour reinforces this responsibility.[91]

I. *Administrative Law Implications of Other Provisions*

1. One of the provisions introduced in the new constitution reads:

> The right of the people to information on matter of public concern shall be recognized. Access to official records, and, to documents and papers pertaining to official acts, transactions, or decisions, shall be afforded the citizen subject to such limitations as may be provided by law.[92]

The significance of this provision is better appreciated when related to administrative agencies and the Ombudsman. Mr. Justice Brandeis once aptly observed: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most effective policeman."[93]

Where the Ombudsman has been established the publicity given to the result of his inquiry has proved most effective in bringing about corrective measures. For the Ombudsman to be effective, it is also essential that he has access to public records.

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[87]Art. VII, sec. 10(1).
[88]Art. IX, sec. 1.
[89]Art. IX, sec. 11.
[90]Art. IX, sec. 2.
[91]Art. VIII, sec. 12(1).
[92]Art. IV, sec. 6.
[93]BRANDEIS, OTHER PEOPLE'S MONEY 92 (1914).

The 1935 constitution authorized the delegation of legislative functions to the President not only to carry out a declared national policy during periods of emergency but also on other occasions as in the case of government reorganizations, the fixing of tariff rates, import or export quotas, wharfage or tonnage dues.[94]

The 1973 constitution retains the provisions authorizing the delegation of these powers to the Prime Minister and expands them.

The emergency powers conferred on the President at the outbreak of the Pacific War enabled him to carry on for the duration of the war as a government in exile and to begin the task of rehabilitation upon reestablishment of the government. Under the 1935 constitution the authority which could be conferred was the promulgation of rules and regulations to carry out a declared national policy. The new constitution expands this to include "powers necessary and proper to carry out a declared national policy."[95] The late President Quirino whose continued exercise of emergency powers was successfully challenged in a series of cases before the Supreme Court[96] once observed that the President under the 1935 constitution did not have to depend on the legislature for delegated power to cope with an emergency. He could fall back on a vast reservoir of constitutional power by declaring martial law. His assessment has been proved accurate. President Ferdinand E. Marcos issued the original martial law proclamation under the 1935 constitution on September 21, 1972.[97] On the same day he announced the result of the referendum at which the 1973 constitution was submitted to the people for approval, he issued a second proclamation of martial law this time under the new constitution which repeats the provision of the old.[98]

2. The new constitution explicitly incorporates the principle of state immunity from suits in two provisions: (1) the president is immune from suits[99] because he is symbolic head of state and (2) as a general principle, the state may not be sued without its consent.[100] In contrast, the British has abolished government immunity in tort and adopted a statute called the Crown Proceedings Act of 1947.[101] The doctrine of sovereign immunity has been criticized in the United States as an "ana-

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[94]Art. VI, secs. 6 & 22(2).
[95]Art. VIII, sec. 15.
[96]Araneta v. Dinglasan and other cases, 84 Phil. 368 (1949).
[97]Proc. No. 1081, s. 1972. 68 O.G. 7624 (1972). By some coincidence on the very same day twenty eight years earlier, September 21, 1944, President Jose P. Laurel by Proclamation No. 29 placed the Philippines under martial law.
[98]Proc. No. 1104, s. 1973, 69 O.G. 592-3 (1973).
[99]Art. VII, sec. 7.
[100]Art. XV, sec. 16.
[101]10 & 11 Geo. 6, ch. 44 (1947).

chronism and injustice" although it continues to be part of the law. Legislation like the Federal Tort Claims Act[102] and court decisions have mitigated its harshness. At the time the 1971 constitutional convention met, the doctrine of sovereign immunity had been eroded in Philippine jurisprudence. Consent to be sued could be implied from a number of circumstances whether suit was directed against the government itself or against an agency or official in the performance of official functions.[103] How the incorporation of the principle which in the past had no explicit constitutional foundation will effect the jurisprudence developed, will have ramifications in administrative law.

PART III. ADMINISTRATIVE LAW IN TRANSITION

What are the administrative law implications of the fact that the transition from the presidential to the parliamentary system takes place during a period of martial law? Does it render this discussion of administrative law under parliamentarism purely theoretical?

Even without martial law the change from presidential to parliamentary government could not have been brought about overnight. The constitution provides for this in the transitory provision parts of which now operate as basic law.

During this period the principles and practices developed under the 1935 constitution generally obtain. Thus, the Supreme Court in a case involving the application of Presidential Decree No. 21 held that in spite of the absence of provision for judicial review of decisions of the National Labor Relations Commission, there was an underlying power of the courts to scrutinize the acts of administrative agencies exercising quasi-legislative or legislative power on questions of law and jurisdiction.[104]

The government reorganization adopted in Presidential Decree No. 1, tackled the problem of administrative agencies going through a life cycle noted in regulatory bodies of the American type, *i.e.*, from youth, to maturity to old age, during which stages their efficacy as regu-

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[102]60 Stat. 842 (1946).

[103]Republic v. De Leon, 101 Phil. 773 (1957); Bureau of Printing v. Bureau of Printing Employees Association, G.R. No. L-15751, January 28, 1961; Mobile Philippines Exploration, Inc. v. Customs Arrastre Service, G.R. No. L-23139, December 17 1966; Universal Mills Corp. v. Bureau of Customs, G.R. Nos. L-24005 & 25339, January 29, 1972; Champion Supply Co. v. Bureau of Customs, G.R. No. L-26287, April 27, 1972; Federal Insurance Co. v. Republic, G.R. No. L-26480, June 15, 1972; Union Insurance Society of Canton v. Republic, G.R. Nos. L-26409, 26550, 26550, 26587 & 31157, July 31, 1972; National Development Co. v. NDC Employees and Workers' Union, G.R. No. L-32387, August 19, 1975.

[104]San Miguel Corp. v. Secretary of Labor, G.R. No. L-39195, May 16, 1975, 64 SCRA 56 (1975)

latory bodies undergo transformation of a kind that, at a later period, instead of acting to regulate enterprises for the benefit of the public, the agency begin to operate as though established for the benefit of the regulated.

The Public Service Commission, for example has been abolished and three new agencies have been put up to replace it.[105] This brings to the fore what students of public administration refer to as Parkinson's law, the proliferation of agencies that accompanies a reorganization.

The trend is definitely towards more government regulation, more government entry into economic activities and more social services — all of which entail an expansion of bureaucracy, not unlikely in the form of administrative bodies denominated commissions, boards, tribunals, corporations, etc. whose acronyms it has become increasingly difficult to follow.

PART IV. CONCLUSION

The pervasive character of administrative law and the effect of the new constitution on the principles and practices developed in this field are matters of more than passing importance. Lawyers and law students need to have a clearer idea of the various ramifications of administrative law for a significant part of law practice has begun to shift from the court of justice to administrative tribunals; and a less judicialized, less adversary procedure will be needed if efficient administrative regulation and management of social services are to be achieved. Since administrative law deals with government as it interferes with private interests and activities, it is as much the concern of every person as it is of the law profession.

This exposition on administrative law is intended to bring out the broad sweep of the 1973 constitutional provisions affecting private rights and activities in an effort to see the shape of things to come. To afford the people greater protection and to extend to them more benefits, the government has broadened its operations. Justice Laurel once said: "The moment greater authority is conferred upon the government, logically so much is withdrawn from the residium of liberty which resides in the people. The paradox lies in the fact that the apparent curtailment of liberty is precisely the very means of ensuring its preservation. The scope of police power keeps expanding as civilization advances."[106]

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[105]Board of Transportation, Board of Communications and Board of Power and Waterworks.

[106]Calalang v. Williams, 70 Phil. 726, 733 (1940).

Will parliamentary responsibility be a safeguard against expanding governmental power? How will parliamentarism affect the administrative process? Is provision for independent constitutional agencies consistent with responsible government? Can the transplants incorporated in the new constitution be made to work in administrative law within the Philippine setting? What can the legal profession do to ensure that the purposes for which the constitution was adopted are realized? What can the people do to contribute to the achievement of these ends?

If today's lecture has served to focus attention on these matters and to invite reflection on the role of law, particularly of the constitution as fundamental law in society specially on Law Day 1975, it will have served a useful purpose.