I Introduction

THIS IS A STUDY of law, politics, and administration. The inquiry began as an effort to look at law in action by studying the history of a government agency to which important dispute-settling, rights-determining functions had been assigned. A branch of the California Department of Industrial Relations, the Industrial Accident Commission (IAC) was responsible for administering state workmen's compensation laws, that is, the legislation governing the liability of employers for injuries occurring to employees in connection with their work. Neither the IAC nor workmen's compensation has attracted much public or scholarly attention. Yet their creation in the early 1910's marks one of the major innovations of the welfare state, and their history dramatizes problems that have been central concerns of students of law and government.

Briefly, the history of the IAC is a story of the transformation of a welfare agency into a court of law. Designed as an administrative authority, the early commission had a mandate for social action, aimed at improving the welfare of disabled workers by means of relief and rehabilitation. It had broad discretion in making and interpreting its policies, and enjoyed considerable freedom from procedural restraints and judicial review. Fifty years later, the agency has lost most of its early sense of initiative and public mission; it has acquired the outlook of a passive arbitrator, responsible only to those private interests of labor and industry it was originally meant to regulate. The IAC has become a highly self-conscious judicial body, largely removed from the concrete problems of welfare policy and governed by exacting standards of procedure. Its primary function is to hear and decide claims of right under a determinate set of laws.

As the agency changed, its modes of interpreting policy were increasingly legalized. Initially, the workmen's compensation legislation was part of a broad program of social welfare, sharply divorced from the legal context of the employment relation. Although this legislation was developed and implemented by the IAC with considerable energy, it was interpreted in a way that was characteristically unsophisticated and narrow; and it was often

enforced with little regard for the rights of affected persons. The history of workmen's compensation is one of growing detachment from public purposes, and progressive incorporation into the private law of employer and employee. Although this legalization revealed a loss of purpose on the part of the IAC, it also reflected an increased responsiveness to the claims of interested constituents and a steady enlargement of their rights. In the process, a set of administrative policies was infused with legal conceptions and took on the character of a body of law.

A striking feature of this evolution was the way it was affected by the changing character and capabilities of those whom workmen's compensation was meant to serve and protect. The early IAC was designed to reach workers who could not be counted upon to act as effective claimants and to bear the burden of promoting their interests. Workmen were then largely unorganized, politically resourceless, and highly vulnerable to the unrestrained power of employers; labor appeared unable to confront industry as an equal adversary. At this early stage, administrative initiative was an alternative to partisan advocacy. Later, with the growth of organized labor, a passive and dependent constituency became an increasingly powerful and active participant. Unions found means of promoting among injured workers a more assertive consciousness of their rights, and developed a system of representation and advocacy that was capable of furthering their interests under the law. With the growing strength of labor, workmen's compensation became a focus of political conflict among organized interest groups, and the administrative process became an arena of continuing legal controversy.

This account brings into focus some important issues of sociological jurisprudence. First, an opportunity is afforded to explore the meaning and institutional foundations of legalization. "Legalization" refers in part to a growth of the relevance of law in practical problem-solving, as well as to the elaboration of legal rules and doctrines that occurs in this process. Such an outcome often depends on the emergence of a system of procedures and modes of reasoning that can serve as vehicles for the use and elaboration of law. The history of the IAC underscores the significance of this procedural aspect of law—law as a distinctive *process* of reaching authoritative decisions. It also invites inquiry into the interplay of the legal process and institutional change.

Second, the IAC suggests that legalization may be more than a simple extension of legal procedures to a setting where they had been unknown; this extension may involve significant changes in the *character* of the legal process, as it is understood and experienced in administrative practice. The evolution of the IAC can be seen as a movement between two contrasting conceptions of the nature and role of law. In its hostility to law, the early agency

exhibits a rather conventional approach to law, which identifies the legal process with the particular modes of adjudication embodied in traditional courts. This view stresses the rigidity of legal procedure, and sees its relevance as narrowly limited to the special task of resolving disputes under a framework of acknowledged rules. In its positive use of law to enlarge the rights of parties, the later IAC reflects the emergence of a more generic conception of law, that sees legal procedure as furthering broader values. This conception focuses on the larger contributions the legal process can make to authority and citizenship; it invites a broadening of the role of law in government.

Finally, our analysis suggests how this evolution is linked to a growing involvement of organized constituencies in legal action. Thus understood, the history of the IAC bears on larger problems of the legal order in modern society, especially the enlargement of the meaning and functions of law in government, and the growing significance of legal advocacy as a mode of political participation.

The Role of Law

The architects of the welfare state had a characteristically narrow and negative conception of the role of law in government. To them, law evoked a system of rigid constraints that paralyzed initiative and prevented effective action to solve the problems of society. Government had to be freed from undue legalism, relieved of the burdensome formalism of legal procedure. It needed broader discretion in making and interpreting public policy. The growth of positive government would depend on the development of an alternative machinery, removed from the ambit of law, and free to "administer" policy in the light of public purposes. The informality and flexibility of the administrative process would provide the freedom needed for enlarging public authority.[1]

This conception rested on much experience with legal institutions. Critics of the welfare state had found in law a means of resisting the extension of government. There was an apparent affinity between the historic concerns of constitutional law, with its stress on restraining the uses of power, and the critics' interest in confining the functions of government. Legal ideals could easily be interpreted in a restrictive spirit, as holding that power would best be restrained if law would *limit* governmental authority. This restrictive approach, as it might be called, is exemplified in A. V. Dicey's classic statement of the contrast between French and English conceptions of administration and the "rule of law."[2] Inspired in part by Tocqueville, Dicey had been impressed by the special privileges and extensive powers government

enjoyed in the French system, a system that protected administrative decisions from judicial review, and offered avenues of redress only before administrative tribunals and under the special standards of "administrative law." In Dicey's view, the genius of English institutions lay in having made government accountable to law under the same terms and before the same courts as any citizen. A system that gave special recognition to administrative authority would, he thought, destroy all restraints on government and reduce its subjects to subservience.

Dicey saw administration as an awesome affirmation of public authority. The growth of government meant an extension of control and surveillance, diminishing the capacities of citizens and weakening individual powers of self-determination. Only a reduction of government initiative would restore the dignity and freedom of individuals. In this perspective, the legal process appeared as a means of imposing restrictions on the extension of public authority. The emphasis was on law as a set of binding rules that would specify the limits of citizens' obligations and thereby enlarge their freedom. What the state lost in power and freedom, the citizen would gain. For the advocates of limited government, the judicial process offered a welcome model. With its elaborate procedures, and the heavy burdens of accountability it imposed on deciders, adjudication seemed to provide a guarantee of strict adherence to rules in official conduct.

The restrictive approach, still predominant in constitutional law, has had an important influence on administrative law.[3] It pictured the role of law in administration as an *external restraint* imposed by courts on government; the principal issue became that of the relative powers and competence of "courts," which presumably stood for legal control, and "administrative agencies," which were assumed to aim at freeing and enlarging public initiative. Not only did this view obscure opportunities for securing *internal* restraints in government, by building legal control within the administrative process; it also ruled out the possibility that, through the courts from without or through built-in legal processes, law might *positively* contribute to the capacities of government and further the realization of public purposes.

The crucial weakness of the restrictive approach is, paradoxically, that despite its critical impulse it diminishes the scope and import of legal criticism. This follows from its tendency to remove policy issues from the legal process. In a restrictive perspective, the chief concern is to reduce the scope of discretion in the exercise of authority. The legal process is a means of confining officials within the bounds of rules. The rules themselves are taken as given; only fidelity to rules is problematic. Apart from issues of procedural fairness in the assessment of evidence, the only question legal argument can raise is: did government exceed its statutory authority? If it had

the requisite authority, it is let alone. If not, its action is forbidden. The potentials of legal argument are thus impoverished in two ways.

First, the narrower the discretion officials enjoy in the implementation of policy, the fewer are the opportunities for interested parties to challenge and influence existing policies. This is quite apparent in the classic picture of adjudication as a mechanical process of applying clear and settled rules to disputed factual situations. The judge is denied discretion, but only to be made a docile executor of policies that are determined outside the judicial forum, and hence beyond the reach of affected persons.

Second, and more important, while focusing on whether government acted within the scope of its authority, legal criticism is diverted away from the substance and import of official determinations. The system allows administrators to develop protected areas where they can exercise discretion without legal scrutiny; once their authority in such areas is legally confirmed, its use is free from further control. This is reflected in the often stated principle that judicial review of administrative determinations should be restricted to questions of jurisdiction, and should not extend to the merits of agency decisions. In either case, whether discretion is reduced or indirectly protected, there is no place in legal argument to challenge official policy. The legal process renounces any role in fashioning the substance or direction of public policy.

This point suggests that the crucial problems of law in administration have less to do with whether and how much discretion officials are granted, than with how that discretion is exercised. As a student of administrative law observes:

> "Public policy" is often barely developed at the time cases come up for administrative adjudication. . . . Necessarily, a vital and on-going process of policy formation is taking place in the form of adjudication. The basic issue may not be informality or no; rather it may be the question whether the adjudicative process is sufficiently broad-gauged to identify and encompass the full range of considerations which should enter the quasi-particularized, quasi-generalized decision in the given case. In short the most vital question—more vital than speed, or expertise, or even fairness—may be *representation.*[4]

This and other recent discussions of the welfare state have brought fresh perspectives to the issue of law and administration.[5] They implicitly suggest an alternative approach, one that affirms the responsibilities of government, but at the same time extends the reach and relevance of legal criticisim.

This approach recognizes a need for public initiative; it expects government to increase opportunities for social and civic participation, and to enhance the freedom of individuals. The weakness it sees in administration lies less in the extension of government per se than in the tendency to let

governmental powers be eroded or diverted from their proper ends. What is demanded of law is not a restriction of government authority, but rather assurance that administrative discretion be used in a manner consistent with the aims of public welfare. The problem is to render administration responsive to the individual and larger interests it is meant to serve.

At issue here is the very meaning of legal procedure. Procedure is not primarily a way of confining government within the limits of rules.[6] Instead, it is seen as *a structure of opportunities for participation and criticism*, allowing affected persons to challenge and influence official policy. In this perspective, the function of legal criticism is less to reduce the role of government than to use and develop the resources governmental policy offers for promoting individual and group interests in public welfare. Law can contribute to the growth of public policy in two related ways. First, the legal process can help to assure positive regard for affected interests in administrative policy-making. Such use of law involves in part an enlargement of the meaning of "fairness" in administrative proceedings—beyond the observance of minimum standards of evidence and due process, toward an affirmative search for maximum representation of interested groups and persons. It also involves a creative development of opportunities for gaining recognition of substantive rights in administrative programs. Legal argument offers a strategy for transforming the "favors" of government assistance into vested "rights," thus helping to secure and enlarge the benefits of public welfare. As Charles Reich argues, "Only by making such benefits into rights can the welfare state achieve its goal of providing a secure and minimum basis for individual well-being and dignity. . . ."[7] This latter point suggests a second way in which law can contribute to public policy: Legal argument can transform public purposes into authoritative principles, by which administrators can be criticized and held to affirmative duties. In both ways, law helps insure that the benefits of governmental programs are meaningful and that they effectively reach those for whom they are intended.

The assertion of rights and the affirmation of public purposes are, of course, closely intertwined; indeed, they should not be seen as separate. A characteristic feature of the legal process is precisely the use of self-interest and advocacy as means of exploring the meaning and bringing out the concrete implications of principles and policy. Law implies and fosters a special conception of authority. The restrictive approach assumed that authority is incompatible with individual initiative and self-assertion, thriving on passivity and subservience; law may curb authority, but cannot change its character. But the legal process also offers an alternative model of governance, where authority is seen as nourished by effective criticism, and enlarged by its ability to respond to the demands of a constituency.

Law that provides a vehicle of participation will not rule out the exercise of discretion. Rather its role is to subject decisions to a special discipline, one that opens them to new influences and imparts new orientations to policy. The judicial process may remain a model for administrative authority; but the model cannot be drawn from the more routine and mechanical forms of adjudication, under which judgments are bound by fairly specific and unquestioned rules. Rather the image is that of a creative process, sometimes found in appellate adjudication, in which courts assess policy in the light of a special commitment to hearing and recognizing claims of right.

Legal and Civic Competence

The contrasting perspectives we have discussed rest in part on a basic ambivalence in the legal process. The latter is always torn between the enforcement of binding rules and the creative use of principles in policy. Law can drift into legalism, adjudication into a blind application of unexamined policies. There are similar variations in the administrative process as between agencies that see their responsibility as limited to the implementation of a defined set of regulations and others that pursue the more positive aim of realizing a "program" of action. The problem then is to discover the conditions that will produce one or the other outcome. Of special importance is the relation between advocacy and the pursuit of political interests.

With its emphasis on fidelity to rules, the restrictive approach to administration reaffirmed a traditional view of legal debate as casebound, sensitive to precedent, and geared primarily to factual inquiry. The image of advocacy conjured up a man proceeding individually to demand obedience to law in the handling of his case. In this conception, a sharp line is drawn between law and politics. Law is seen as the realm of the passive subject; only in politics does the citizen acquire an active role, making demands that are meant to influence policy. This dichotomy of citizen and subject is made explicit in a recent study of civic participation,[8] in which the authors distinguish between *political* competence—the ability to participate in policy-making through the use of power, and *administrative* competence—the ability to relate to officials as a subject:

> The competent citizen has a role in the formation of general policy. Furthermore, he plays an *influential* role in this decision-making process. . . . The subject does not participate in making rules, nor does his participation involve the use of political influence. His participation comes at the point where general policy has been made and is being applied. . . . This kind of subject influence, or administrative competence, is more circumscribed, more passive than that of citi-

> zen. . . . It is not a creative act of influence that can affect the content of decisions themselves, except in an indirect way.[9]

The best the legal actor can hope for, in exchange for his own obedience, is to gain the compliance of authority with its rules. Although it regularizes authority, law remains an alien instrument of power. And appeals to law, even if assertive, are primarily defensive; the separation of law and politics empties them of significance as acts of citizenship.

The continuity of law and politics is restored when discretion in the formulation of policy is accepted as a central feature of the legal process. Then emphasis shifts from the problematic case to the problematic rule, and the individual claim comes to be seen as representing a larger class of interests. As a vehicle of participation, legal advocacy offers a unique opportunity—*it provides a forum that is in some degree independent of the power of participants.* In principle, law moderates the role of power in the political community. But as the potential of legal action is extended, advocacy comes to require greater political skill and resources. A politically meaningful legal order can restore the continuity of citizen and subject roles, but only if the subjects can act as citizens.

A competent legal actor needs the knowledge and skill, or the effective representation, to make his way in the legal world. But this is more than passive knowledge of rights and duties. It is an active and searching awareness of the opportunities offered by law for enhancing one's position in society. One might call this "law-consciousness." Another aspect of legal competence is assertiveness. The legal actor transforms his problems into issues of principle, his needs into grounded claims, his aspirations into reasoned arguments. Like the political actor, he wants to influence decisions, but his appeal is less to power, interest, or good will than to the authority of principle. In this perspective, the assertion of a principled claim is the paradigmatic act of *homo juridicus.* Legal participation is not submission to authority but, on the contrary, a way of insisting that authority is problematic, open to criticism, and in need of justification. A new form of authority is envisioned, one that is less preoccupied with stability and acceptance, and that values the unsettling impact of controversy and the participation of an assertive citizenry.

The capabilities that an effective use of law requires are of course highly precarious and unevenly distributed in the social structure. Historically, variations in legal competence have deprived underprivileged groups of meaningful access to legal opportunities. The emergence of the welfare state was in part a response to this weakness of the legal order; administration offered a mode of governmental action that could do away with civic participation. Administrative programs could relieve the incompetent of the burden

of legal initiative. But that also freed administration from legal criticism.

This dilemma is resolved by the formation of competent constituencies. The strength of the latter need not depend on the capabilities of individual actors. The organized group can be the agency for building effective constituencies and lending individuals the moral support and political skills needed for competent advocacy. Indeed, the greater the role of groups in sponsoring legal action, the more likely it is that advocacy will serve social interests and be a political instrument.

Hence, although law may provide a mode of participation that is less contingent on power, this ideal is always precarious. If its realization depends on the formation of effective constituencies, the problem of power is never avoided. Here lies a basic dilemma of the legal order—that its ability to further equality is crucially dependent on self-help. There is a risk indeed that those who lack the needed competence may find their failure to gain justice under law more profoundly alienating than even the arbitrariness of paternalistic government. A commitment to law as a mode of governance requires that more thought be given to means of promoting the growth of a competent citizenship, including the possibility that legal institutions might assume more affirmative responsibilities for developing the capacities of their constituents.

The Study

A few words of introduction, but also of caution, should be said about how this research was carried out. Although the contemporary IAC has taken much of our attention, this is primarily a historical study. And it is the historical part of the research that has created the most serious problems of inquiry.

Legislative documents provided one source of information, unfortunately an all too often very poor source. Although the text of legislative bills in their main successive versions are printed and published, and the *Journals* of the state legislature report the actions taken by committees as well as on the floor, there is usually no way of knowing from the legislative documents alone what the proposed measures meant to accomplish, what objections they met, and by what groups they were supported or opposed. This information must therefore be gathered from other less accessible and less systematic sources, such as administrative files and the records of interested private organizations. However, since 1944 the Industrial Accident Commission has been under almost continuous investigation by various committees of the Senate and Assembly. The reports of those inquiries, including abstracts of the testimony presented by interested parties, provide a rich source of infor-

mation on legal and administrative changes during the last twenty years of IAC history.

In studies of institutional change, administrative documents are perhaps the single most valuable source of data. But here again the historical records of the IAC are scarce and fragmentary. The only published documents are the uninterrupted series of yearly reports of the commission and the Department of Industrial Relations; the successive versions of the IAC *Rules of Practice and Procedure,* published since 1947 as a part of the California Administrative Code; and a few other papers and brochures published by the commission itself. The first ten years of agency history are fortunately well covered by those published sources. The official reports of the IAC were then lengthy and richly informative, qualities they lost in later years; they are supplemented by a variety of published statements of policy, special reports, addresses, and papers. For recent years, the internal files of the commission provide an adequate supply of information, but they do not go back earlier than 1944. For the earlier period, one has to rely on whatever documents were privately kept by members of the staff; fortunately for the historian, some of them have kept fairly rich collections of instructions, minutes of staff meetings, memoranda, and the like, which extend as far back as the early 1920's. The written sources have been supplemented by interviews with the older employees of the commission.

In addition to documentary sources, materials on the contemporary IAC have been drawn from (1) field observations of administrative proceedings and law firm and labor union practices; and (2) interviews with members of the commission and agency employees, practicing lawyers, insurance agents, and union officials. The field work was carried out mainly between April, 1964, and January, 1965, and thereafter intermittently throughout 1965 as the need for additional information became apparent.

Origins of the Agency

Before turning to the details of our story, it may be useful to remind the reader of the legal and historical background from which workmen's compensation and the IAC emerged. Before workmen's compensation was adopted, the law of employers' liability was dominated by the principles of liability for negligence, a legal outgrowth of the idea that each individual is responsible for his faults, and for his faults only.[10] In theory, the injured employee had no special claim against his employer other than the claims any victim of any accident would have had against the author of that harm. The law took no account of the special risks the employee ran in connection with his work. Except for whatever contractual duties the employer assumed, the servant remained a stranger to his master and had only the rights of a stranger.

Even those meager rights had been considerably undermined by some policies of the common law, known as the "common law defenses," that the employer could invoke when his negligence had been established. Those policies included two general rules of the law of torts, which often worked special hardship in the particular context of employment. First, the rule of "contributory negligence" barred recovery, whenever the employee's injury was partly due to his own lack of care. Second, when the employee knew the dangers involved in his work, he was held to have "assumed the risks" of incurring harm, and hence to have voluntarily renounced his right to indemnification. Besides those two general policies, the common law of the early nineteenth century had evolved a special rule for injuries occurring within the framework of the relation of master and servant; although an employer would normally be liable for accidents caused by the negligence of subordinate employees, the "fellow servant" rule exempted him from this responsibility when the victim was one of his own employees, a "fellow" of the negligent servant.

Attempts to reform the common law began toward the end of the nineteenth century. The early efforts did not depart from the fundamental conceptions of the law of negligence; they preserved the principle of liability for fault, but either repealed or restricted the applicability of the "common law defenses." In effect, the "employers' liability laws," as they were called, restored the injured employee to the status other persons enjoyed under the law of torts. By 1910, the federal government and most states, including California, had enacted some legislation along those lines.[11]

Those measures were soon pronounced insufficient, and under the influence of a movement started in Europe, proponents of welfare legislation suggested the adoption of a new principle of liability to replace the law of negligence: Employers would be made responsible for all injuries suffered by their employees "in the course of and arising out of" employment. The rationale was that since industrial work inevitably involved risks for the health and safety of employees, the employer could properly be held to assume responsibility for such risks of his enterprise. He would thus be charged with the "human costs" of production, just as he bore the costs of materials and equipment. At the same time, instead of the common law right to unlimited indemnification of all losses connected to the injury, the new system would entitle the employee only to limited and statutorily specified benefits, consisting mainly of a more or less extensive right to medical treatment and of substitute wages for a length of time varying with the severity of the injury. This kind of legislation became known as "workmen's compensation" law.[12] California was one of the first American states to adopt the compensation system.

The changes workmen's compensation entailed amounted to a quite radi-

cal reform. They brushed aside a standard of responsibility that had the support of a solid legal tradition in the common law of torts and was still profoundly embedded in the morality of the times. Only a minor role was left to the idea of fault—that of justifying the imposition of penalties on either employers or employees in case of "serious and willful misconduct" on their part. The change was so radical, indeed, that for a while the constitutionality of workmen's compensation remained in doubt. In 1911, a New York compensation act was found unconstitutional by the highest court of the state. The language of the decision was particularly strong:

> This is a liability unknown to common law and we think that it plainly constitutes a deprivation of liberty and property under the Federal and State constitutions. . . . It authorizes the taking of the employer's property without his consent and without his fault.[13]

This decision came at the very time California was considering the adoption of its own compensation legislation. In order to surmount the constitutional objections raised by the New York court, the California legislature decided to make its first compensation system elective. The Roseberry Act of 1911[14] offered employers a choice of either remaining under the common law of negligence, modified by the elimination of most "common law defenses," or of electing to be covered under the new system. At the same time, it created an Industrial Accident Board with the mission of administering the compensation provisions of the statute. The board had three members, appointed by the governor for revolving terms of four years; it enjoyed exclusive authority to implement the new law, including the responsibility to adjudicate controverted claims; it had the power to appoint the personnel it needed for its task.

While settling for the limited aims of the Roseberry Act, the legislature also voted a constitutional amendment, later adopted in the elections, which would eventually permit the enactment of a compulsory compensation law.[15] This was done at the following session of the legislature. The 1913 Workmen's Compensation, Insurance and Safety Act,[16] known as the Boynton Act, laid the foundations of the present compensation law; continued the Industrial Accident Board under the new name of Industrial Accident Commission; and extended its authority over the regulation of insurance and safety. The constitutionality of the new act was confirmed in 1915 by the California Supreme Court.[17] Still, there were lingering doubts over several aspects of the compensation scheme, including its reliance on administrative control. Three decisions of the United States Supreme Court in 1917[18] and two further amendments to the California Constitution in 1913[19] and 1917[20] were required to establish workmen's compensation on secure legal ground.

In light of those constitutional clarifications, the 1917 legislature decided to reenact and complete the earlier legislation in a new statute. The Workmen's Compensation, Insurance and Safety Act of 1917 left intact the mandate and authority of the IAC.[21]

The study covers the history of the IAC from its inception in 1911, as the Industrial Accident Board, to what may have appeared as its end in early 1966. After a prolonged investigation, the 1965 legislature adopted a plan of reorganization, under which the adjudicative functions of the IAC were entrusted to a "new" board, henceforth to be called the Workmen's Compensation Appeals Board; and some auxiliary administrative services the commission had maintained were placed under the authority of a separate agency, the Division of Industrial Accidents.[22] The reform became effective after completion of the field work for the study, and no attempt was made to analyze its impact.

Chapters II and III deal with the early IAC. The former analyzes the welfare perspective within which the agency defined its mission; the latter is concerned with the means chosen by the IAC to implement its program, and the implications those means had for the authority of the agency. Chapters IV and V trace the growth of initiative and assertiveness among interested parties, especially the organization of labor into an effective constituency, and the emergence of legal advocacy as a mode of participation. Chapter VI argues that the IAC responded to the growth of participation and controversy by withdrawing from administrative responsibilities. Chapters VII and VIII describe the judicialization of the IAC, and assess the significance of this change for the character of the agency. Chapter IX concludes with a general assessment of this institutional transformation, with emphasis on the ambiguities of legalization.

Notes to Chapter I

1. For a broad statement of those issues in jurisprudence, see Roscoe Pound, *Administrative Law* (Pittsburgh: University of Pittsburgh Press, 1942); also Julius Stone, "The Twentieth Century Administrative Explosion," *California Law Review*, LII (1964), 513.

2. A. V. Dicey, *Introduction to the Law of the Constitution*, (10th ed.; London: Macmillan and Co., Ltd., 1961), pp. 328–405.

3. A restrictive perspective underlies most classic discussions of law and administration in American jurisprudence, regardless of whether they favor or fear the growth of the administrative process. See, for instance, James M. Landis, *The Administrative Process* (New Haven: Yale University Press, 1938), and "Crucial Issues in Administrative Law," *Harvard Law Review*, LIII (1940), 1077; "Symposium on Administrative Law," in *Yale Law Journal*, XLVII (1938), 515–674; *Report of the Attorney General's Committee on*

Administrative Procedure (Washington, D.C.: U.S. Department of Justice, 1941), Senate Document No. 8, 77th Congress, 1st sess., 1941.

4. Robert G. Dixon, Jr., Review of Peter Woll, *Administrative Law: The Informal Process"* (Berkeley and Los Angeles: University of California Press, 1963), in *Administrative Science Quarterly*, VIII (1963), 401.

5. See, for instance, Edgar S. Cahn and Jean C. Cahn, "The War on Poverty: A Civilian Perspective," *Yale Law Journal*, LXXIII (1964), 1317–1352; Harry Jones, "The Rule of Law and the Welfare State," *Columbia Law Review*, LVIII (1958), 143; Charles A. Reich, "The New Property," *Yale Law Journal*, LXXIII (1964), pp. 733–787; Jacobus ten Broek, "California's Dual System of Family Law: Its Origin, Development and Present Status," *Stanford Law Review*, XVI (1964), 257–317, 900–981, XVII (1965), 614–682; Jacobus ten Broek and the Editors of the *California Law Review* (eds.), *The Law of the Poor* (San Francisco: Chandler Publishing Co., 1966); *The Extension of Legal Services to the Poor* (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1964), pp. 23–49.

6. Compare with a recent discussion of the role of purpose and policy, as opposed to rules, in legal decision-making, Graham Hughes, "Rules, Policy and Decision-Making," *Yale Law Journal*, LXXVII (January, 1968), 411–439.

7. Reich, *op. cit.*, p. 786.

8. Gabriel Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Boston: Little, Brown and Co., 1965), pp. 136–185.

9. *Ibid.*, pp. 138, 168–169.

10. On the law of employers' liability, see H. G. Wood, *A Treatise on the Law of Master and Servant* (2nd ed.; San Francisco: Bancroft-Whitney Co., 1886), pp. 670–914.

11. See the Federal Employers' Liability Act, United States, 34 Stat. 252; and California Statutes of 1907, Chap. 97.

12. On workmen's compensation law generally, see Arthur Larson, *The Law of Workmen's Compensation* (New York: Matthew Bender and Co., 1952); Samual B. Horovitz, *Injury and Death under Workmen's Compensation Laws* (Boston: Wright and Potter, 1946); Carl Hookstadt, *Comparison of Workmen's Compensation Insurance and Administration* (Washington, D.C.: U.S. Department of Labor, Bureau of Labor Statistics, 1922), Bull. No. 301; E. H. Downey, *Workmen's Compensation* (New York: The Macmillan Co., 1924); Walter F. Dodd, *The Administration of Workmen's Compensation* (New York: The Commonwealth Fund, 1936); Clarence W. Hobbs, *Workmen's Compensation Insurance* (2nd ed.; New York: McGraw-Hill Book Co., 1939); Marshall Dawson, *Problems of Workmen's Compensation Administration* (Washington, D.C.: U.S. Department of Labor, Bureau of Labor Statistics, 1940), Bull. No. 672; Herman M. Somers and Anne R. Somers, *Workmen's Compensation* (New York: John Wiley & Sons, 1954); Earl F. Cheit, *Injury and Recovery in the Course of Employment* (New York: John Wiley & Sons, 1961).

13. *Ives* v. *South Buffalo Railway Co.*, 201 New York 271, at 294, 298 (1911).

14. California Statutes of 1911, Chap. 399.

15. California Constitution, Art. XX, Sec. 21.

16. California Statutes of 1913, Chap. 176.

17. *Western Indemnity Company* v. *A. J. Pillsbury*, 170 Cal. 686 (1915), at p. 720.

18. *New York Central Railroad* v. *White*, 243 U.S. 188; *Hawkins* v. *Bleaky*, 243 U.S. 210; *Mountain Timber Co.* v. *Washington*, 243 U.S. 219 (1917).

19. California Constitution, Art. XX, Sec. 17 1/2.

20. *Ibid.*, Sec. 21.

21. California Statutes of 1917, Chap. 586. On workmen's compensation law in California, see Douglas A. Campbell, *Workmen's Compensation Insurance: Principles and Practice* (Los Angeles: Parker, Stone and Baird, 1935); Warren L. Hanna, *The Law of Employee Injuries and Workmen's Compensation*, I, *Practice and Procedure*, II, *Principles* (Albany, Calif.: Hanna Legal Publications, 1935); *California Workmen's Compensation Practice*, State Bar of California, Continuing Education of the Bar (n.p.: Sunset Press, 1963).

22. California Statutes of 1965, Chap. 1767.