

**Australian Institute of Administrative Law Annual Conference**  
**- National Administrative Law Forum 2010**  
**Delivering Administrative Justice**

**Administrative Justice – Words in Search of Meaning**

Chief Justice Robert French

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Baby boomers will contrive any opportunity and then seize it to return to the golden days of the sixties when they and Australian Administrative Law were promising young things. The first National Administrative Law Forum was held in 1991 and your invitation to open the twentieth presents the occasion for gratuitous reflections about the study of administrative law at the University of Western Australia in 1969, twenty two years before the first National Administrative Law Forum. There is, however, method in this indulgence as it reminds us a little of the development of the field over the last half century from a time in which the term 'administrative justice' had not been coined, at least in the field of administrative law, in Australia. It also enables me to foreshadow questions I would wish to put in opening this conference. One question is – 'How did the idea of administrative justice arise?' Another is – 'What is it that administrative justice delivers?' Another is - 'Why do we want to know?' The last question is perhaps the most important.

A perusal of the Commonwealth Law Reports in the late 1960s discloses a relatively sparse selection of High Court decisions on administrative law. One case which we studied was *Banks v Transport Regulation Board (Vic)*.<sup>1</sup> In that case certiorari issued to quash the revocation of a taxi licence. There was discussion by

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<sup>1</sup> (1968) 119 CLR 222.

my predecessor, Sir Garfield Barwick, of *Ridge v Baldwin*<sup>2</sup>, including his denunciation of the reasoning of the Privy Council in *Nakkuda Ali v Jayaratne*<sup>3</sup> as erroneous 'in a radical respect'.<sup>4</sup> There was reference in terminology, which now seems outdated, to the obligation of the Transport Regulation Board to 'act judicially'.<sup>5</sup> And there was the post scripted observation by Kitto J which he hoped would 'not be thought unhelpful' that 'an overhaul by competent legal advisers of the Board's regulations, forms and procedures ... seems to be called for in the interests both of the Board itself and of those whose livelihoods depend so much on the due and fair performance of the Board's functions.'<sup>6</sup>

The leading Australian textbook prescribed for our study was the third edition of *Principles of Australian Administrative Law* written by Professors Benjafield and Whitmore and published in 1966.<sup>7</sup> The leading English text was the second edition, published in 1968, of de Smith's *Judicial Review of Administrative Action*.<sup>8</sup> Its title page bore what some might regard as a rather aspirational statement, perhaps even one about administrative justice. It was a vision of compatibility between judicial decision-making and State policy taken from Francis Bacon's essay 'Of Judicature':

*Let no man weakly conceive that just laws,  
and true policy, have any antipathy; for  
they are like the spirits and sinews, that*

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<sup>2</sup> [1964] AC 40.

<sup>3</sup> [1951] AC 66.

<sup>4</sup> (1968) 119 CLR 222 at 234.

<sup>5</sup> (1968) 119 CLR 222 at 233.

<sup>6</sup> (1968) 119 CLR 222 at 243-244.

<sup>7</sup> DG Benjafield and H Whitmore, *Principles of Australian Administrative Law* (3<sup>rd</sup> ed) (The Law Book Company Ltd, Australia, 1966)

<sup>8</sup> SA de Smith, *Judicial Review of Administrative Action* (2<sup>nd</sup> ed) (Stevens & Sons Ltd, London, 1968).

*one moves with the other.*

Benjafield and Whitmore set the scene for Australian administrative law in the 1960s with an outline of its British heritage and its Australian constitutional setting. They uttered the oft heard lament about the extension by the High Court of federal power 'in a way that would astound the drafters of the Constitution'.<sup>9</sup> They added:

Although State power is still important Federal power is becoming of increasing concern to the administrative lawyer.<sup>10</sup>

What is interesting in retrospect is the way in which the Commonwealth judicial and merits review mechanisms inspired similar developments in various of the States and Territories in both merits and judicial review, Ombudsmen, and freedom of information legislation.

Although in 1966 when Benjafield and Whitmore published the third edition of their book, the Kerr Committee Report<sup>11</sup> was five years away and the Commonwealth Administrative Law Package, nine years away, the authors wrote presciently sensing change:

A climate has been created in which the courts are more prepared than the United Kingdom courts to question the exercise of power by ministers and senior officials, and in which the Parliaments are ready to provide legislatively for review of administrative action by the courts.<sup>12</sup>

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<sup>9</sup> Benjafield and Whitmore, above n 7, 29.

<sup>10</sup> Benjafield and Whitmore, above n 7, 29.

<sup>11</sup> Commonwealth Administrative Review Committee Report, Parliamentary Paper No 144 of 1971 (Kerr Committee Report).

<sup>12</sup> Benjafield and Whitmore, above n 7, 33.

As students we explored the classifications of official powers and the categorisation of tribunals or decision-makers as judicial or quasi-judicial. The term 'procedural fairness' had not come into vogue. Natural justice still held sway. There was discussion of the arcana of the prerogative remedies and the concepts of error on the face of the record and jurisdictional error. Identifying what constituted 'the record' left many with unsatisfied intellectual longing or led them to eschew longing altogether. The seeds of a lasting affection for the unencumbered simplicities of declaratory relief and statutory equivalents of the common law writs were planted deeply. Happily, for those of us who in the early years of practice in Western Australia sought judicial review of magistrates' decisions, the *Justices Act* 1902 (WA) contained an order to review process which provided most of the remedies one could hope for from a prerogative writ, but without the procedural pain. When the *Administrative Decisions (Judicial Review) Act* 1977 (Cth) came along it was, for those of us with experience taking magistrates' decisions on review to the Supreme Court, conceptually familiar.

Sadly, with the passage of time, many of the cases we studied, like we who studied them, acquired a dusty patina of antiquity dulling the gleam of novelty which, like that of the sixties, seems to have gone forever, save for our fading memories. It is comforting to know, however, that even now the old cases can sometimes come back to remind us of our youth. *Thompson v Randwick Corporation*<sup>13</sup> and *CC Auto Port Pty Ltd v Minister for Works*<sup>14</sup> focussed on, what must have seemed to us as students, the unusual event of compulsory land acquisition by public authorities for improper purposes. It was a pleasure last year in *R & R Fazzolari Pty Ltd v Parramatta City Council*<sup>15</sup> to be able to mention them both again. It goes to show that old fact situations never die, they just get recycled in new legal garb.

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<sup>13</sup> (1950) 81 CLR 87.

<sup>14</sup> (1965) 113 CLR 365.

<sup>15</sup> (2009) 237 CLR 603.

Administrative law did not fare well as a separate category of case law in the Index to the Commonwealth Law Reports for the period from Federation to the 1980s. The Consolidated Index to the Commonwealth Law Reports covering the first 150 volumes from 1903 to 1982 listed no cases under the title 'Administrative Law'. That title directed the reader to other headings such as Bylaws and Regulations, Constitutional Law, the Crown, Discretionary Powers, Parliament, Prerogative Writs and Quasi Judicial Tribunals. The effect of the Commonwealth Administrative Law Package and the rise of judicial review of administrative action could be seen in the Index to the next 34 volumes. Twenty six reported decisions of the High Court were mentioned under 'Administrative Law'. They included *Minister for Immigration and Ethnic Affairs v Teoh*<sup>16</sup>, *Public Service Board (NSW) v Osmond*<sup>17</sup>, *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*<sup>18</sup>, *Kioa v West*<sup>19</sup>, *Annetts v McCann*<sup>20</sup>, *Attorney-General (NSW) v Quin*<sup>21</sup>, *Ainsworth v Criminal Justice Commission*<sup>22</sup>, and *R v Toohey; Ex parte Meneling Station Pty Ltd*<sup>23</sup>. A significant number of them involved proceedings under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

The Commonwealth Administrative Law Package brought into being new mechanisms for merits and judicial review which were of general application. They brought before the Administrative Appeals Tribunal and the Federal Court, for

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<sup>16</sup> (1995) 183 CLR 273.

<sup>17</sup> (1986) 159 CLR 656.

<sup>18</sup> (1986) 162 CLR 24.

<sup>19</sup> (1985) 159 CLR 550.

<sup>20</sup> (1990) 170 CLR 596.

<sup>21</sup> (1990) 170 CLR 1.

<sup>22</sup> (1992) 175 CLR 564.

<sup>23</sup> (1982) 158 CLR 327.

consideration on the merits and for error of law or process, decisions ranging across a very wide spectrum of official powers. Some areas contributed more than others. Much Commonwealth administrative law was developed through decisions about veterans' entitlements, social security benefits, immigration and taxation. In the commercial sphere, regulators were challenged, particularly in relation to the exercise of coercive investigative powers. Those developments had an effect, as they were intended to, upon primary decision-making. As a legal member of the Social Security Appeals Tribunal in the late 1970s, before it acquired statutory status, I was able to observe the impact of the Commonwealth Administrative Law Package on the kind of documentation that was provided by officers of the department making decisions under the legislation.

It is not surprising that out of this increase in administrative review and judicial decision-making there should emerge discussion about the possibility of some unifying rubric such as administrative justice which would accommodate normative standards of general application to administrative decision-making and review processes. A notion of '*administrative justice*' was perhaps necessary to avoid the colonisation of administrative decision-making and review by curial models. For if one thing was always clear, it was that while judicial review was significant, the important questions about administrative justice had to be answered at the level of the primary decision-maker.

Moving forward, as the saying goes, to 1991, key issues in Administrative Law in Australia in that year were reflected in papers given at the first National Administrative Law Forum. Some of those papers reflected the tension between the standards and methodology of judicial review and the requirements of efficiency, certainty and consistency in high volume administrative decision-making. It is a tension which is prominent in discussion about what constitutes '*administrative justice*'. By way of example, I felt transient guilt pangs when reading the other day the first of the papers given at the 1991 forum. It was written by Evan Arthur, the

Director of Asylum Policy at the Immigration Department. It was called 'The Impact of Administrative Law on Humanitarian Decision Making'.<sup>24</sup> It could have been called 'The Inhumane Impact of Administrative Law on Humanitarian Decision Making'. It referred to the destructive impact of Federal Court decisions and particularly one of mine, a case called *Damouni*<sup>25</sup>, upon the administration of s 6A(1)(e) of the *Migration Act 1958* (Cth) under which entry permits could be granted to non-citizens on 'strong compassionate or humanitarian grounds'. My decision and other decisions of the Federal Court made in the late 1980s took the view that the term 'strong compassionate or humanitarian grounds' was a collocation and did not require careful distinctions to be made between 'compassionate' grounds on the one hand and 'humanitarian' grounds on the other. Unfortunately, the department had built up an elaborate set of eight guidelines based on such distinctions. Mr Arthur's comment on the effect of my decision was that it '... has probably done as much as any other decision to convert Departmental instructions into raw material for the recycling industry'.<sup>26</sup>

The decisions of the Court on s 6A(1)(e) were subjected to trenchant and legitimate criticism by Mr Arthur. His paper illustrated usefully the practical implications of judicial review for administrative decision-makers, particularly those concerned with high volume decision-making. Section 6A was repealed in December 1989, although at the time there were some 8,000 applications, covering over 10,000 people, for the grant of permanent residence on compassionate or humanitarian grounds.<sup>27</sup> Those applications still had to be dealt with.

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<sup>24</sup> E Arthur, 'The Impact of Administrative Law on Humanitarian Decision-Making' in *Fair and Open Decision Making: 1991 Administrative Law Forum* (Royal Australian Institute of Public Administration (ACT Division) and Australian Institute of Administrative Law, Canberra, April 1991)

<sup>25</sup> *Damouni v Minister for Immigration, Local Government and Ethnic Affairs* (1989) 87 ALR 97.

<sup>26</sup> Arthur, above n 25, 6.

<sup>27</sup> Arthur, above n 25, 3.

The 'strong compassionate and humanitarian grounds' criterion was subsumed in December 1990 into a general discretion conferred on the Minister by s 115 of the amended Act to grant an entry permit if the Minister considered it in the public interest to do so.

It might have been of some satisfaction to Mr Arthur to know that three years after his presentation I was appointed as President of the National Native Title Tribunal. My role in that office was to oversee the functioning of the Tribunal under the *Native Title Act 1993* (Cth), a statute borne in contention and attended with a good deal of uncertainty about how it was going to work on the ground. One of my tasks was to devise administrative procedures relevant to the primary functions of the Tribunal, which were registration and mediation of native title claims, as well as arbitration of the grant of mining and other interests over land the subject of registered claims. The Tribunal and I, as its President, were subject to a number of judicial review applications by indigenous and non-indigenous interests. The assessment procedure for registered claims, which I had devised and implemented in order to exclude non-meritorious claims, was effectively denounced by the High Court as 'tantamount to a proleptic exercise of the jurisdiction of the Federal Court'.<sup>28</sup> When the case was heard, Aboriginal people appealing my decision were sitting in Court wearing tee-shirts bearing the legend 'Ban French Testing'.

John McMillan, speaking from the ramparts of the executive/judicial interface, spoke of the impact of judicial review on decision-making made by Ministers of the Crown. He referred to cases such as *Sankey v Whitlam*<sup>29</sup>, *Ex parte Northern Land Council*<sup>30</sup> and *FAI Insurances Ltd*<sup>31</sup> as elements of 'an overt judicial

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<sup>28</sup> *North Gananja Aboriginal Corporation v Queensland* (1996) 185 CLR 595 at 623.

<sup>29</sup> (1978) 142 CLR 1.

<sup>30</sup> (1981) 151 CLR 170.

<sup>31</sup> (1982) 151 CLR 342.

strike<sup>32</sup> on assumptions about reviewability of gubernatorial and ministerial decisions. The purpose of his paper as he described it was 'to illustrate how that strike has continued, in a far more subtle and penetrating way'. He pointed to the consequences of judicial review for ministerial functions in relation to briefing papers, delegations, confidentiality of submissions, implementation of ministerial policy, ministerial determination of policy and the confidentiality convention in relation to previous governments' records. He highlighted the *Platters'* case where the Federal Court at first instance directed the Minister to exercise a discretionary power in favour of allowing the Platters group to come to Australia 'to revive old memories of "Smoke Gets in Your Eyes"'. The Minister publicly attacked the Court for usurping his function although, McMillan observed, it was Actors' Equity whose objection to the Platters' visit provided the sole foundation for the Minister's decision.<sup>33</sup>

Professor Cheryl Saunders, as President of the Administrative Review Council, offered a comparative overview of Australia's administrative law system and that of a number of other countries. She made the point that it was not characteristic of Australia to make such a radical innovation in its system of government but added that it was 'quite characteristic of Australia to continually doubt the wisdom of what it has done'.<sup>34</sup> She said that one lesson we could learn from other countries was to be proud of the Commonwealth administrative review system. She described it as 'an object of envy by those who know and understand it,

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<sup>32</sup> J McMillan, 'Who is in Charge?: The Impact of Judicial Review on Ministerial Decision Making' in *Fair and Open Decision Making: 1991 Administrative Law Forum* (Royal Australian Institute of Public Administration (ACT Division) and Australian Institute of Administrative Law, Canberra, April 1991) 2.

<sup>33</sup> *Conyngham v Minister for Immigration and Ethnic Affairs* (1986) 68 ALR 423; (reversed, (1986) 68 ALR 441).

<sup>34</sup> C Saunders, 'Lessons and Insights from other Common Law Countries', in *Fair and Open Decision Making: 1991 Administrative Law Forum* (Royal Australian Institute of Public Administration (ACT Division) and Australian Institute of Administrative Law, Canberra, April 1991) 12.

matched only by wonder that changes of that magnitude could politically be achieved'.<sup>35</sup>

The focus of this Forum, twenty years on, is 'administrative justice'. It is not a term which was mentioned when I was a student. It did not seem to get any airplay at the first National Administrative Law Forum. It seems to have emerged, as I suggested earlier, from reflection about the objectives of and values underlying the way in which we, as a society, want official decisions affecting the subject to be made. It seems to have been born with a noble purpose, but also to have been engaged for most of its life in a search for meaning. The conjugation of the words 'administrative' and 'justice' was foreshadowed in the Kerr Committee Report in 1971, which led to the establishment of the Commonwealth Administrative Law Package. The report did not coin the term. However the objective which it described of justice to the individual and efficiency of the administrative process identified two important elements in later debate about definition.

The quest for a useful meaning for the term has been well documented.<sup>36</sup> The first serious public discussion of it in Australia, of which I am aware, was at the Annual Conference of this Association in 1999 under the general title 'Administrative Justice – The Core and the Fringe'. Professors Creyke and McMillan, writing the introductory overview to the published proceedings of that Forum, did not shrink from definitional difficulties. The tension between administrative law rights and efficient administration meant that those seeking a definition of 'administrative justice' would need 'to recognise that the essence of the concept is tempered by conflicting (and legitimate) interests'.<sup>37</sup> It was not a concept

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<sup>35</sup> Saunders, above n 34, 12.

<sup>36</sup> R Creyke, 'Administrative Justice – Towards Integrity in Government' (2007) 31 *Melbourne University Law Review* 705.

<sup>37</sup> R Creyke and J McMillan, 'Administrative Justice – The Concept Emerges' in R Creyke and J McMillan (eds) *Administrative Justice – The Core and the Fringe* (Australian Institute of Administrative Law, 2000) 3.

that could be applied to all governmental processes such as the framing of budgets, intergovernmental arrangements and policy formulation. A notion of justiciability was in play marking the province of administrative law. Importantly they observed:

Thus, it is the impact which a government administrative decision can have on the rights or interests of a person that is a key determinant of the expectation that administrative justice should be observed. In that sense, at its core, administrative justice is a philosophy that in administrative decision-making the rights and interests of individuals should be properly safeguarded.<sup>38</sup>

To speak of administrative justice as a 'concept' suggests that it has some agreed content which can be defined. If it does not, then it is just a pair of words into which people may read a variety of things. That is not a novel phenomenon. The law is full of such terms. Judicial activism is a good example. The important question may be not so much – 'What do the words mean?', as – 'Why do we want them to have a meaning at all?' The search for meaning suggests an unmet need. If that need is simply to define a new island in the great archipelago of the law and public policy to be annexed and ruled over by the cognoscenti, then it is not a worthy pursuit.

I think, however, that there is a worthy justification available. That is found in the utility of identifying at least normative standards which can legitimately be said to answer to the designation 'just' and which are capable of general application to our system of administrative law and practice. A statement of such standards can provide a framework by which we can not only judge systems, practices and particular decisions, but can provide a basis for their review and improvement.

These standards, I suggest, must be linked to the constitutional framework in which they operate, which includes a written constitution, representative democracy, the rule of law, formal or conventional separation of legislative, executive and

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<sup>38</sup> R Creyke and J McMillian, above n 37, 3 and 4.

judicial powers, and a milieu of recognised common law rights and freedoms. There are other desirable linkages to international human rights norms, or at least those which have been afforded recognition, if not statutory force, in domestic law, in treaties to which Australia is a party or which have entered the realm of customary international law and can therefore be taken as potentially informing the common law. The basic norms of administrative justice will be evaluative and qualitative. Quantitative measures of performance and satisfaction have their part to play, but must necessarily play it within a normative framework.

How does one begin to grapple with the question – 'What is it that is delivered when administrative justice is delivered?' Given the extensive Australian and comparative literature now in existence on the topic, the recycling of my thoughts on the subject offered at the 1999 Forum seem superfluous. Nevertheless, I think it important to emphasise the utility of a generally acceptable skeleton concept of administrative justice which can be fleshed out in a variety of ways.

A minimalist approach to administrative justice asks the question – 'When parliament enacts a law which empowers an official to make decisions affecting individuals, what are the minimum criteria by which those decisions and the processes by which they are made, can be regarded as just?' Here it must be assumed that the law itself is not unjust. An official empowered by a law to make a decision affecting the rights, privileges or liabilities of somebody else will meet the requirements of the law if he or she makes the decision:

- in accordance with rules which the law prescribes;
- rationally, in the minimal sense that the decision is logically open on the information properly before the decision-maker having regard to the law which he or she must apply;
- fairly – a central requirement of any form of justice. It is important to emphasise that fairness is not an optional moral extra in decision-making. I say that having regard to the existence of statutes which purport to exclude the rules of natural justice for certain classes of decision. Procedural fairness

is linked to the requirements of lawfulness and rationality. The law requires that the decision-maker not be distracted from fact finding or the exercise of discretion by bias, nor handicapped by the absence of information which could have been provided by the person affected had he or she been given an opportunity to make a submission or comment on or rebut adverse information before the decision-maker; and

- intelligibly – by the provision of reasons so that the person affected by the decision, and perhaps the wider community, will know why it has been made. Absent intelligibility in the decision, the first three standards may be of diminished practical effect because the capacity to judge compliance with them and to seek review will be compromised.

In the context of express statutory powers which underpin the vast majority of official decision-making affecting individuals, I would regard those elements as the bare bones requirements of an understanding of administrative justice. They are persuasive and supportable because closely aligned to the requirements of the law, underpinned by norms expressed in the law through the processes of representative democracy. They are partly based upon criteria applicable in judicial review. They may not be inspiring, but they are necessary to build consensus about what administrative justice involves.

Where broad administrative discretions are concerned, common concepts of fairness beyond procedural fairness expect consistency of decision-making – that is that similar cases are treated similarly. This objective may be advanced by policy guidelines. A tension exists between that objective and the flexibility necessary to accommodate a case which, because of its particular circumstances, would yield an absurd result if dealt with according to the book – by which I mean the relevant departmental manual of instructions. Lower level primary decision-makers may not be equipped to make the kind of judgments necessary in such cases. Internal and external merits review have an important part to play in that context.

Other basic aspects of administrative justice which import consideration of the wider interests of individuals affected by administrative decisions and also societal interests include:

- efficiency in decision-making, so that the cost imposed on the individual and the community by the process reflects an equitable distribution of burdens between community and individual;
- timeliness in decision-making; and
- accessibility and affordability by the citizen, extending to such things as the simplicity of application forms and processes.

These three aspects of administrative justice can also be said to be aspects of curial justice reflected in ongoing reforms to court processes over the last three or four decades.

Additional elements can be built on to the skeleton of administrative justice, which I have outlined. The standards so far suggested are directed to administrative decisions, whether they be primary or by way of internal or external merits review. The availability of a review system is itself a distinct element of administrative justice. Judicial review can remedy errors of law, procedural unfairness and certain forms of irrationality. It is not the only way of dealing with such problems. Internal and external merits review can also address those issues. Merits review, especially where undertaken by an external and independent tribunal, has the advantage that it enables the hard case to be dealt with on an individualised basis giving appropriate weight to policy. Importantly it provides a mechanism for the diffusion of power so that primary decision-makers will not always have the last word.

Beyond my own fairly elementary thoughts about the matter, the literature about administrative justice describes a variety of approaches to what that term describes. One generalised definition of 'administrative justice' is 'the qualities of a decision process that provide arguments for the acceptability of its decisions'.<sup>39</sup>

In a paper published last year in the *University of New South Wales Law Research Series*, Halliday and Scott described and classified some of the types of administrative justice which have been proposed in the literature concerning the topic. Those types include:

1. a bureaucratic rationality model – concerned with efficiency, accuracy and cost effectiveness;
2. a professional treatment model – concerned with service to the clients and designed to meet the needs of the particular claimant;
3. a moral judgment model, which derives from traditional ideas of court-centred adjudication.

These three types of administrative justice were proposed by Mashaw.<sup>40</sup> Another three types proposed by Adler were:

1. Managerialism, which gives responsibility to public sector managers for achieving standards of service and freedom to determine how those standards are to be achieved.

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<sup>39</sup> S Halliday and C Scott, 'A Cultural Analysis of Administrative Justice' [2009] UNSWLRS 3 in M Adler (ed) *Administrative Justice in Context* (Hart Publishing, Oxford, 2010).

<sup>40</sup> Halliday and Scott, above n 39, citing J Mashaw, *Bureaucratic Justice: Managing Social Security Disability Claims* (Yale University Press, New Haven, 1983).

2. Consumerism – an administrative process which engages with the citizen as a consumer of public services with levels of service often specified in a charter. Accountability is provided by a complaint system.
3. A market system – the citizen is seen as a consumer who may, if dissatisfied, choose another service provider.<sup>41</sup>

These interesting examples of different models of 'administrative justice' reflect some of the elements that may, with different degrees of emphasis, be found in real life administrative systems and processes and which may also be in tension in such systems. It is no doubt my judicial cultural bias that leads me to prefer an analysis that derives from constitutional arrangements and assumptions upon which our society operates. To return to the general definitions from Mashaw, such basic criteria confer qualities on a decision-making process that provide powerful arguments for its acceptability.

Administrative justice is, in some jurisdictions, conceived of as a species of human right. What more would that say about administrative justice than can properly be said about any version of the concept which is necessarily anchored in the Constitution, the rule of law and the common law rights and freedoms. Professor Anthony Bradley, in an article written in 1994, considered administrative justice as a human right protected by Article 6 of the European Convention on Human Rights. He said:

Of what might the right to administrative justice consist? In essence, such a right must be concerned with securing the observance by the State of certain minimum standards of administrative law. The first of these ... is that individuals are entitled to seek judicial review of government decisions which adversely affect them. If so, then this implies a further right to have the court apply the substantive grounds of judicial review – the *ultra vires* doctrine, the rule against abuse of

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<sup>41</sup> M Adler, 'A Socio-Legal Approach to Administrative Justice' (2003) 25 *Law & Policy* 323.

power, the rules of natural justice and so on. It also implies something about the procedure of judicial review – since the right must be to an effective procedure that will enable the minimum grounds of review to be applied by the reviewing court.<sup>42</sup>

These, of course, are not the only things that could be said about administrative justice as a human right, but many of the human rights guaranteed by the International Covenant on Civil and Political Rights will be met by the observance of minimum standards of legality, rationality, fairness, accessibility, affordability and efficiency.

My preference is to approach the concept of administrative justice by application of these norms to primary decision-making because that is where most final decisions are in fact made. Their application can then be enforced by a variety of mechanisms which become part of the infrastructure of administrative justice.

With administrative justice according to the primary criteria indicated and assuming just laws and policy *one should*, to paraphrase Bacon, *move with the other*.

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<sup>42</sup> AW Bradley, 'Administrative Justice: A Developing Human Right?' (1995) 1 *European Public Law* 347 at 351.