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Genesis, Evolution and Challenges of Administrative Law

José Ramón Chaves García

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MINIMAL ADMINISTRATIVE LAW

Minimal Administrative Law

Volume I. Genesis, Evolution and Challenges of Administrative Law

José Ramón Chaves García

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Minimal Administrative Law. Volume I. Genesis, Evolution and Challenges of Administrative Law

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INTRODUCTION

Every cathedral begins with its foundations. The work entitled "Minimal Administrative Law", which will be offered in numerous volumes of brief and similar length, must start from the pillars.

In the case of administrative law, a look at the past is indispensable if we are to understand the origin and development of power, and to appreciate the emergence of public law in its threefold use: as an instrument of power for achieving effectiveness; as a tool for securing economic and human resources; and as a limit that safeguards the liberty, equality and fundamental rights of citizens.

A bird's-eye view is also needed in order to appreciate the models that exist in comparative law, and in particular the duality between the "rule of law" and the "administrative regime".

Finally, once we know where administrative law comes from, we must make the effort to find out where it is going and, of course, where it ought to go.

This is what this first volume offers, in a tight synthesis, stripped of doctrinal references, speculation and gratuitous erudition. It is, quite simply, a matter of beginning at the beginning of that fascinating journey through the branch of law that intervenes most in our lives, our property and the well-being of us all.

UNIT 1

ORIGINS OF ADMINISTRATIVE LAW

«The history of the reduction of these immunities, of this constant resistance that the Administration has put up against the demand for full judicial review of its acts by carving out exempt and unreviewable enclaves of its own action, is, we may say, in general terms, the very history of Administrative Law (...). It must be said, in any event, that this reduction of immunities cannot be the work of pure and abstract statutory declarations, but must be the result of a whole vast movement of struggle for the Law, in which, naturally, the legislature is not the only party responsible, nor perhaps even the primary one. This is where, above all, the work of the case law comes in, which has already begun, boldly, we must say, though at times also timidly and warily, to draw all the consequences of that splendid Act. It is the duty of all jurists to assist this great work of the case law, to facilitate it and open up paths for it, to encourage it in its forays into territory it has not yet covered, to organise and systematise its isolated findings».

EDUARDO GARCÍA DE ENTERRÍA, La lucha contra las inmunidades del poder en el Derecho Administrativo (poderes discrecionales, poderes de gobierno, poderes normativos), Revista de Administración Pública, no. 38, 1962.

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