FOREWORD

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Out of the intermediate congress of the International Academy of Comparative Law held in Taiwan in May 2012 has emerged this impressive volume by Jean-Bernard Auby on the codification of administrative procedure. The theme of the congress having been codification of the law, a segment on administrative procedure was preordained, for interest in codification in this area has accelerated in recent years.

Professor Auby launches the work with the observation that administrative procedure, rather than judicial review of administrative acts, lies at the heart of administrative law. Professor Auby is undoubtedly correct. It is what administrative bodies do and how they do it, rather than how they are controlled, that matters most in the lives and businesses of those affected. For too long what is rightly viewed as a tailpiece of administrative law has dominated scholarship in the field.

Codification has become the form par excellence of administrative procedure. Only a minority of States, it would appear, lack administrative procedure codes of one kind or another at the present time. France is only the most prominent example among these.

But generalizing about administrative procedure codes is not an easy matter. General administrative procedure codes, or GAPAs (as Professor Auby terms them for short) range widely along various dimensions. Among the jurisdictions encompassed in this study, some codifications date back to the nineteenth century (Spain, for example), while others have not been around very long. (Chile adopted its in 2006.) Some treat administrative procedure narrowly defined, while others venture into what the Finnish report describes as "qualitative standards of administrative behavior in general." Some, like the American, must by definition treat the so-called administrative tribunals that populate the landscape. Others, due to the absence of such quasi-judicial bodies within the administration, are spared that obligation. Some are "thick" and others "thin," the former tending to encompass rules, the latter principles. Some organize the law within federal systems, others in unitary ones. Some carve away the administration of certain sectors (like revenue raising), while

others do not. Some deal with administrative organization as such; others do not. And so on.

In addition, GAPAs are not hermetically sealed from other sources of law. Those other sources may be constitutional (as is the case with the notion of administrative due process), but they may also take the form of specific "ancillary" legislation. That has required States to address how GAPAs and these other sources actually interface, and each state has found its own way.

Nevertheless, general patterns within administrative procedure codification may be discerned, and it is a merit of the present work that it brings them generously to the surface. One such feature of current GAPAs is that they were prepared by committees of experts consisting of administrative officials, judges and academics. That GAPAs are largely the product of extended study is not without significance, because it has made possible an impressive amount of borrowing among legal systems. Undoubtedly, borrowing is facilitated in turn by administrative procedure taking codified form, for codes transplant more easily than the decisional law of courts. The proliferation of codes in the former communist countries of central and eastern Europe offers the most dramatic evidence.

One of the most prevalent features of GAPAs is their delineation between individual and regulatory acts, though the terminology varies from State to State. Most GAPAs treat separately adjudication (i.e. the resolution of individual cases, whether formally or informally) and rulemaking. Others actually exclude the regulatory species from the GAPA altogether. In either case, the distinction is recognized. The near-universal unit is the administrative act, of whichever species.

Particularly interesting are the trends in GAPAs that can be discerned over time, whether in terms of (a) a growth in judicial-like procedures within the administration, (b) gravitation toward such non-conventional forms of administration like contracting and data management (including access to documents), (c) a receptiveness to citizen participation, typically through electronic means, (d) attentiveness to the problems of administrative silence and inertia, and (e) a heightened interest in the discharge of administrative functions by delegation to private parties.

Where is administrative procedure codification heading? One conclusion is that, among species of legislation, it lends itself to frequent reform. Professor Auby would doubtless agree that the dynamic character of the field reveals its importance to governance and social ordering in today's world. Even, in some measure, de-codification can be discerned.

There is one last piece of evidence of the robustness of the field, and that is the pressure that those jurisdictions lacking a GAPA are experiencing to develop and adopt one of their own.

As Professor Auby shows, the field is one of ongoing dynamism. Even once codified, administrative procedure comes in periodically for fundamental rethinking. That a shared interest in accuracy, efficiency and fairness is driving administrative procedure reform all across the globe makes it evident that comparative administrative law has a continuing role to play. "Codification of Administrative Procedure" is a most welcome addition to the literature in this all-important domain.