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Administrative Justice

Charles S. Hyneman
University of Illinois

ADMINISTRATIVE JUSTICE*

At risk of being charged with superficiality by Mr. Dickinson, one might say that this study is concerned with four problems: the nature of the concept of supremacy of the law; the relation, in theory, of administrative adjudications to the idea of the supremacy of the law; the practice of American state and federal courts in determining under what circumstances and to what extent administrative findings shall be subject to review by the courts; and the relation of legal education to the problem of reconciling the goal of supremacy of the law with the political necessity of administrative adjudications. In each of these departments the author demonstrates an excellent preparation for his task, the net result of his labors being an admirably balanced and lucid introduction to a subject of most timely interest to those who are at all concerned with the problem of administrative law in the United States.

In his discussion of the concept of "supremacy of the law", the author explains his understanding of the meaning of the term and traces the history of the doctrine that public officials should act within limits placed by the law. While the efforts of the author are directly aimed at tracing the doctrine in British and American history, he goes aside to show that the doctrine was and is not peculiar to Anglo-American people but was lightly indulged in in ancient Rome (Seneca and Tacitus cited to prove this), and that it served as a degree of comfort to the church fathers. In his elucidation of this topic the author cites and quotes from ancient, medieval and modern theorists, writers on

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* *Administrative Justice and the Supremacy of Law in the United States.* By John Dickinson. Volume II of Harvard Studies in Administrative Law, Harvard University Press, Cambridge, Mass. 1927. Pages xiii, 403. Price $5.00.

political theory, historians, books on jurisprudence, judicial decisions, and the law review articles.

Mr. Dickinson asserts (p. 35) that adjudication by administrative tribunals differs from adjudication by the common law courts "in precisely the particulars which furnish the reasons for the law's insistence that every individual shall be entitled to have his rights tried in a law court". He sees the difference to be "at least three" in number: (1) administrative tribunals are not bound by the common law rules of evidence; (2) parties before the administrative tribunal do not enjoy trial by jury; and (3) "administrative tribunals decide controversies coming before them, not by fixed rules of law, but by the application of governmental discretion or policy". This latter quality, the author explains, arises largely from the fact that administrative bodies do not possess the independence accorded the courts but are part and parcel of the political branches of the government. The problem of preserving the supremacy of the law while permitting the very real advantages of administrative determinations is to be solved by allowing the regular courts a proper jurisdiction to review the findings of the administrative body; just what is a "proper" power of review being the essential question which occasioned the writing of this book.

One-half of the work is devoted to a study of the extent to which the United States courts will review the findings of administrative tribunals, the study being divided so as to allow separate consideration of the practice of the courts according to the field of administration involved. The author reveals that there is sufficient diversity in the practice of the courts according to the field of administration involved to justify his classification. In the limited space which is devoted to the examination of cases on review of administrative findings (some 800 cases are listed in the table at the end of the book) one can hardly expect to find a complete treatment of the subject. Of this the author is fully aware, as he reveals in his preface; indeed, he declares that his modest hope is little more than to emphasize the need of a treatise on the subject. Mr. Dickinson is most satisfactory in his discussion of the cases involving review of the findings of public utilities commissions, particularly the Interstate Commerce Commission, and the findings of the Federal Trade Commission. Especial attention is given to the case of *Ohio Valley Water Co. v. Ben Avon Borough* (1919), 253 U. S. 287, which the author views as a kind of ancient mariner holding up the orderly procession of the precedents tending to establish that the administrative body is final authority in the determination of facts. The sketchy handling of the cases reviewing the findings of administrative tribunals in the general field of police regulation, e. g., boards of health, workmens' compensation boards, etc., demonstrates the crying need of more extensive study of that type of cases.

The author's discoveries as to the extent to which the courts will go in reviewing questions of law and questions of fact are

not to be recapitulated in the compass of a short review. Perhaps it is sufficient to say that he finds the extent of review differing according to the field of administration involved and according to the form of proceeding in which review is sought. It should be further noted that the author makes incisive and illuminating inquiry into the problem of what Constitutes a question of law and what constitutes a question of fact.

The final chapter of the book, entitled "The Supremacy of the Law and the Problem of Legal Education", is a good handling of the familiar plea for broader social and economic training of embryo lawyers. The author goes to the point of outlining a proposed course of study for pre-law students, even suggesting texts, the reason back of this attention to details being, apparently, a conviction that pre-law students should be instructed in groups reserved to themselves. It is submitted by the reviewer that this would be but a makeshift reform; the failure in instruction in the social sciences is due to the fact that college instructors as a class have shown no intelligent comprehension of the task involved in the teaching profession. When the college instructor has applied himself so intelligently and so religiously to his task as to ascertain the processes, specific responses if one prefers that phrase, which occur in the act of learning, he will then be in a position to train the student in a technique of analyzing and weighing material and social phenomena, which, it is submitted, is the ultimate aim of education, whether of the pre-law student or the pre-theological student. This, of course, evades the question of casting aside class instruction in favor of individual tutoring, a step which college administrators and givers of endowments seem not to be considering in the United States today.

Mention must be made of numerous special notes which are attached here and there to the text. These are matters which might, with further work, have been turned into articles or comments for law reviews. Some of these, e. g., one at p. 106 ff., entitled "Notice and Hearing", and one at p. 115 ff., entitled "Mathematical Theory of Law", run up to about 1,500 words in length. One might contend that the author has forced a place for these in the text, and so he seems to have feared; however, the symmetry of the work is not destroyed, if it is impaired.

It seems to the reviewer that in this book Mr. Dickinson has broken some fertile ground in a very competent manner. The study presents the magnitude, the form, and something of the detail of the problem attacked, and this is done with an array of authorities and a clarity and coherence of style not often achieved in the same work. Mr. Dickinson may expect to receive in the future a ready ear from those who have read this book.

CHARLES S. HYNEMAN.

University of Illinois.