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Ernest R. Baltzell
Smith, Remster, Hornbrook and Smith

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STATUTORY RULES AND ORDERS

Ernest R. Baltzell*

The rules and orders of federal and state administrative officials made in the exercise of authority delegated by Congress and state legislatures have, in recent years, become an important part of our law. As the functions of government have increased new administrative departments, commissions, boards and bureaus have been created. New and important powers have been conferred upon administrative officials. The exercise of these powers has resulted in a body of rules, regulations and orders comparable in volume and in importance, in many instances, to the enactments of Congress and state legislatures. This body of law has been called "administrative legislation" and the power exercised in making it has been frequently referred to as "quasi-legislative."

In Great Britain a similar body of law has developed and is collected in an official publication called "Statutory Rules and Orders." This body of law in Great Britain has been described as "Delegated Legislation." The Règlements d'Administration Publique represent in France similar rules and orders.

* See biographical note, p. 505.

1 See John A. Fairlie, Administrative Procedure in Connection with Statutory Rules and Orders in Great Britain.

2 In 1904 the statutory rules and orders in force on December 31, 1903, were collected and officially published in twelve volumes, averaging approximately one thousand pages a volume. Since that time the rules and orders made in each year have been officially published yearly. It is to be regretted that there is no official collection and publication of either state or federal statutory rules and orders in this country.

3 See Carr, Delegated Legislation.
The delegation of powers to administrative officials is not new in government. The great increase in the functions of the modern state, however, has necessarily resulted in a frequent resort to this governmental device. A legislative assembly composed of numerous individuals and sitting for only brief periods of time is obviously incapable of performing all the duties of a modern government. Legislative sessions are too short. The problems to be solved are too numerous and complex, and are often highly technical. Legislators have not the training and experience to solve them. It is impossible for a legislative body to establish a rule to fit the facts of each particular problem with which modern government is concerned. It is likewise impossible for a legislative assembly to apply a general principle enacted by it to particular cases. Modern government demands the services of experts and a highly complex division of labor. The functions of legislators have become the determination of policies, the enactment of these policies into general rules of conduct to be enforced by the courts or administrative officials, the delegation of authority to administrative officials to amplify, define and execute these rules of conduct, and the maintenance by investigation, interpolation and other means of a certain amount of supervision over the exercise of the powers delegated to administrative officials. To ascertain the legislative will one must look not only to the statutes but also to the rules, regulations and orders made by administrative officials pursuant to statutory authority.

The exigencies of modern government in Great Britain and the United States have resulted in the increased use of the same governmental device of delegating powers to administrative officials. It is elementary in British constitutional law that there is no limitation enforceable in the British courts on the power of Parliament to delegate its authority, whatever limitation there may be in custom. In the United States, however, there are two constitutional limitations on the power of Congress and the state legislatures to delegate legislative authority: (a) the separation of powers, and (b) the rule of law that legislative power cannot be delegated.\footnote{The “due process” clauses of federal and state constitutions may possibly constitute a third limitation.} By analyzing and comparing the powers of a legislative nature delegated to administrative officials in both countries one may be able to secure some evidence of the efficacy of these two constitutional limitations in the United States.
The following analysis and comparison of powers delegated to administrative officials in Great Britain and the United States are for that purpose, and are made from powers which are legislative in their nature, i.e., powers of a type which it would be competent for Congress or an American state legislature to exercise. No attempt is made to draw any nice distinction between legislative and judicial powers.\(^5\) The omission of powers which may be said to be of a judicial nature obviously neglects an important part of administrative power.

A few examples only of the various types of powers of a legislative nature exercised by administrative officials in Great Britain and the United States are discussed. The examples taken from the United States, moreover, are primarily powers delegated by Congress. It is thought, however, that the instances cited will be sufficient to illustrate the types of power exercised in both countries, and to furnish a basis for comparing the extent to which powers of a legislative nature have been conferred upon administrative officials in the two countries.

I.

**The Power to Amend Statutes**

The power of a legislative body to amend its own enactments is, of course, unquestionable. Administrative and executive officials do not possess any inherent or constitutional power to amend statutes. There are instances, however, in Great Britain and this country of powers delegated to executive or administrative officials to alter the provisions of existing enactments.

The British Coal Mines Act, 1911, Section 86—(1), contains the following provision:

"The Secretary of State may by order make such general regulations for the conduct and guidance of the persons acting in the management of mines or employed in or about mines as may appear best calculated to prevent dangerous accidents and

\(^5\) One of the best delineations between legislative and judicial power which, in the writer's opinion, has been made is that of Mr. Justice Holmes in *Prentis v. Atlantic Coast Line*, 211 U. S. 210, 226. "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts, and under laws supposed already to exist. That is its purpose and its end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or such part of those subject to its power."
to provide for the safety, health, convenience and proper discipline of the persons employed in or about mines, and for the care and treatment of horses and other animals used therein, and any such regulations may vary or amend any of the provisions contained in Part II of, or the Third Schedule to, this Act."

Part II contains provisions as to safety in mines—regulations as to ventilation, lamps, shafts and winding, traveling roads and haulage, support of roofs and sides, signaling, the use of machinery, electricity and explosives, the prevention of coal dust, inspections as to safety, and the withdrawal of workmen. The Third Schedule contains provisions as to the care and treatment of horses and other animals used in mines. It will be seen, therefore, that Parliament, while providing the initial regulations, has, by means of the amending power, given to the Home Secretary a wide latitude of authority as to the safe conduct of the coal mining industry.

The British Health Insurance Act, 1913, Section 19, authorizes the Insurance Commissioners to modify the provisions of the principal act with reference to persons employed casually or intermittently. Section 16 of the Unemployment Insurance Act, 1920, authorizes the Minister of Labour to revise the rates of contribution of employers and employees fixed by the act. A further example is to be found in the Factory and Workshop Act, 1901, Sections 3 and 7, which give the Home Secretary power to modify the act as to lighting, air and sleeping quarters.6

Nor is this important power wanting in the United States. The Director of the Bureau of Standards, with the approval of the Secretary of Commerce, may permit variations and tolerances in the law as to weights and measures7. No better example can be found in this country than the "flexible tariff" provisions of the Fordney-McCumber Tariff Act, 1922. That Act provides:

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6 The Local Government Act, 1929, Section 130 (1) provides: "If any difficulty arises in connection with the application of this Act to any exceptional area, or in bringing into operation any of the provisions of this Act, the Minister (of Health) may make such order for removing the difficulty as he may judge to be necessary for that purpose, and any such order may modify the provisions of this Act so far as may appear to the Minister necessary for carrying the order into effect." The power of the Minister of Health under this section expired December 31, 1930.

“In order to regulate the foreign commerce of the United States and to put into force and effect the policy of the Congress by this Act intended, whenever the President, upon investigation of the differences in costs of production of articles wholly or in part the growth or product of the United States and of like or similar articles wholly or in part the growth or product of competing foreign countries, shall find it thereby shown that the duties fixed in this Act do not equalize the said differences in costs of production in the United States and the principal competing country he shall, by such investigation, ascertain said differences and determine and proclaim the changes in classifications or increases or decreases in any rate of duty provided in this Act shown by said ascertained differences in such costs of production necessary to equalize the same.”

An excellent example of this power in state administration is found in the powers of the Industrial Board in the Department of Labor of the State of New York. If the law or any rule as to the construction or alteration of buildings proves too onerous, the Board has authority to permit variations in the requirements, provided only that the spirit of the provision or the rule be observed and public safety secured.

II. The Dispensing Powers

The power of amending the provisions of a statute is closely related to the power of dispensing with the provisions of an act as applicable to particular subjects. This is not a general prerogative right such as the Crown formerly possessed in England, but a power delegated by statute.

A provision in the British Merchant Shipping Act, 1906, Section 78—(1), contains an interesting example:

“The Board of Trade may, if they think fit, and upon such conditions (if any) as they think fit to impose, exempt any ship from any specific requirement contained in, or prescribed in pursuance of the Merchant Shipping Act, or dispense with the observance of any such requirement in the case of any ship, if they are satisfied that that requirement has been substantially complied with in the case of that ship, or that compliance with that requirement is unnecessary in the circumstances of the case, and that the action taken or provision made as respects the sub-

9 Laws of New York, 1921, c. 50, s. 30.
ject matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement."

Similarly, the Dentists Act, 1921, Section 3—(4) gives the Dental Board power to dispense with certain requirements for admission to practice dentistry. The Factory and Workshop Act, 1901, contains many examples of the use of the dispensing power in British administration.

A familiar example in this country of the dispensing power in administration is the power of the Interstate Commerce Commission to exempt railroads from the provisions of the "long and short haul" clause of the Interstate Commerce Act, 1887. In New York, to take another example, smoking is prohibited by law in all factories. The Industrial Board, however, may "permit smoking in protected portions of a factory, or in such classes of occupations when, in its opinion, the safety of the employees will not be endangered thereby." Further, in the case of the Workmen's Compensation Law, the Industrial Board of New York has power to excuse the failure to give notice of the injury or death of an employee.

III.

The Suspending Power

The administrative suspending power is greater than either of the powers thus far discussed. It is the delegated power of an administrative official to suspend the operation of a whole

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10 Section 43 gives the Home Secretary power to authorize another day than Saturday as a half-holiday. Section 49—(3) gives him power to authorize the overtime employment of women in any class of non-textile factories and workshops in which perishable articles are manufactured or dealt with. Section 114 gives him authority to grant any class of factories an exemption from the provision of the Act as to limewashing, etc. Section 150—(1), authorizes him to exempt from the provisions of the Act any factories or workshops belonging to the Crown. See in this connection various provisions of the Coal Mines Act, 1911.

11 See also the power formerly possessed by the Secretary of Commerce to dispense with the regulations prescribed by statute relating to radio wave lengths. The Code of Laws of the United States, p. 1553.

12 Laws of 1921, c. 50, s. 283, (2).

13 Laws of 1921, c. 642, s. 4, 27. Laws of 1921, c. 50, s. 299—(2), enable the Board to exempt certain machinery from provisions requiring machinery creating dust to be equipped with devices for removing the dust. See also sections 300 and 388 of this act.
act or part of an act indefinitely or for a prescribed period. Needless to say, this power is usually given only to the highest officials.

The British Coal Mines Regulation Act, 1908, Section 4, provides:

"His Majesty may, in the event of war or of imminent national danger or great emergency, or in the event of any grave economic disturbance due to the demand for coal exceeding the supply available at the time, by Order in Council suspend the operation of this Act to such extent and for such period as may be named in the order, either as respects all coal mines or any class of coal mines."

The King, by an Order in Council, suspended this act during the war with respect to oil shale mines in Scotland.

The power to suspend acts of a local nature has been given to servants of the Crown in certain cases. Thus the Trade Boards Act, 1918, Section 1, provides that any act confirming a provisional order made under section one of the principal act may be repealed by a special order of the Minister of Labour.

The Defence of Realm Consolidation Act, 1914, section 1-(2) provided:

"Any such regulations may provide for the suspension of any restrictions on the acquisition or use of land, or the exercise of the power of making 'bye-laws', or any other power under the Defence Acts, . . . or the Military Land Acts, 1891 to 1903, and any such regulations or any orders made thereunder affecting the pilotage of vessels may supersede any enactment, order, charter, bye-laws, regulation or provision as to pilotage."

The President of the United States from time to time has had authority to suspend acts of Congress. An early example of this was an act of February 9, 1799, which gave him power to remit and discontinue certain restraints and prohibitions which Congress had prescribed with respect to commercial intercourse with the French Republic, if he deemed it expedient and consistent with the interests of the United States. By an Act

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16 See in this connection the Public Health Act, 1875, s. 303; 7 Edw. 7., c. 53, ss. 2 (2) and 3.
of December 19, 1806, he was given authority to suspend the operation of the Non-importation Act. He has also had power to suspend acts imposing tonnage duties and prohibiting the importation of meat, cattle and hides. By an Act of August 24, 1912, Section 4, he was authorized to suspend the Isthmian Canal Commission when, in his judgment, the Panama Canal had advanced sufficiently toward completion to render the services of the Commission unnecessary.

The Federal Reserve Act, Section 11, moreover, gives the Federal Reserve Board authority, in its own discretion, to suspend any requirements of the Act as to reserves kept by member banks.

IV.

The Exercise of Power "Non Obstante"

In exercising the dispensing power as a prerogative right the Crown used the words "non obstante", which was a technical phrase equivalent to the words "any article or clause in such or such a statute to the contrary notwithstanding." A common form of conferring a power upon an administrative officer, more particularly in the United States, is to provide that the power shall be exercised in conformity with the statute or law. This power to do an act or make a regulation non obstante any statute to the contrary, enables the administration to act in a manner which might otherwise be illegal. It is not a power distinct in itself but may be used in the exercise of the dispensing power or for making regulations to secure particular ends or for any other purpose. It is thus a component part of the other powers of a legislative nature of the administration.

A provision in the English Ministry of Transport Act, 1919, Section 13—(5), makes it lawful for the Minister of Transport,

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17 Acts, March 3, 1815, and May 31, 1830.
18 Acts, March 6, 1866.
21 Laws of New York, 1922, c. 48, s. 24: "Subject and in conformity to this chapter and the constitution and laws of the State the Commissioner (Commissioner of Farms and Markets) may enact and repeal necessary rules which shall . . . ."
notwithstanding any statutory or other provision to the contrary, to make regulations prohibiting or restricting the use on railways of privately owned wagons, limiting the number of such wagons or prescribing their number and capacity. Similarly, the Secretary of State has authority, after consulting with the workmen affected, to allow employment below ground for not more than eight hours in twenty-four, notwithstanding the maximum of six hours fixed by the Coal Mines Act, 1919.

There are one or two examples of this form of granting administrative authority among the powers of the Public Service Commission of the State of New York. The Commission has power to determine the just and reasonable rates which shall be charged by common carriers, "notwithstanding that a higher or less rate, fare or charge has been heretofore prescribed by general or special statute, contract, grant, franchise, condition, consent or other agreement." There is a similar provision in a statute giving the Commission powers as to the standards for the purity, measurement, etc., of gas.

These few examples are sufficient to illustrate the use of this form of delegating authority. Needless to say, such a provision obviates a great amount of litigation and uncertainty as to the actual powers possessed by administrative officers. It serves a very practical purpose in the complexity of modern administrative law.

V.

The Power to Determine the Date on Which a Statute Shall Become Effective, the Territory in Which It Shall Operate and the Subjects Which It Shall Regulate

The determination of the date upon which an act comes into operation and the duration and application of a statute are important parts of administrative activity, especially in Great Britain. It is, of course, essential to a statute that a specific date or dates be fixed upon which it is to come into force. But in many cases Parliament, particularly, has deemed it expedient to delegate this duty to the administration. Similarly, the area

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22 Laws of New York, 1921, c. 335, s. 2.
23 Laws of New York, 1921, c. 134, s. 39.
24 The power of fixing the date upon which a statute ceases to be effective is so closely related to the administrative suspending power that it may
within which a statute applies and the particular subjects to which the act is applicable are essential to the determination of the legislative will. But these duties have also been, in numerous cases, delegated to the administration.

The power to fix the "appointed day" is exercised under three different conditions in Great Britain. In the first place, the act often fixes a date upon which it will come into operation unless a named administrative department or official fixes a later or earlier date. A slight variation from this form is found in the Divorce Act, 1857, which provides that the act should come into operation on such a day not earlier than January 1, 1858, as Her Majesty by Order in Council should determine. In the second place, the administration is often given sole discretion as to when the act shall come into operation, as in the Dominion of Canada Act, 1857, the Union of South Africa Act, 1909, and the Government of India Act, 1919. And, in the third place, the administration is often given power to fix the "appointed day" upon which particular provisions of a statute shall come into effect, as in the Education Act, 1918.

This device for bringing statutes into operation has not been adopted in the United States, with one or two exceptions. The date on which a statute becomes effective is fixed in each statute, or is determined by the date on which the governor or President approves it. An Act of Congress of August 24, 1912, however, prohibited railroads from owning competitive water carriers, and provided that this part of the act should come into operation on July 1, 1914. If, however, the Interstate Commerce Commission should be satisfied that an existing water service was being operated in the public interest and was of advantage to the convenience and commerce of the people, it was given power to extend the time during which such service might be operated beyond July 1, 1914. Similarly, the Commission was given power to extend the time within which common carriers were required to comply with Section 3 of the Safety Appliance Act, 1910. No general use, however, has been made of this method for fixing

be considered as a part of that power. An example of this power is found in the Administration of Justice Act, 1920, by which its provisions limiting trial by jury and suspending grand juries temporarily were made revocable by Order in Council. See Carr, *Delegated Legislation*, p. 13.

25 See the Local Government Act, 1888, which provided that the act should come into operation on the first day of April next or such earlier or later day as the Local Government Board should determine upon.

26 37 Stat. 566.
the date upon which a statute or its provisions become effective in this country.

The power to determine the application of an act has been frequently delegated to the administration in Great Britain. This takes two forms. The administration is given authority to extend a statute to a prescribed area or to determine the subjects to which the legislative principle shall apply.

The former power arises out of the relation which Parliament bears to England, Wales, Scotland, Northern Ireland and to certain parts of the Empire, and formerly bore to Ireland. The Military Service Act (No. 2), 1918, gave power to His Majesty in Council to apply the act to Ireland. By an act of 1898, the Lord Lieutenant might apply to Ireland by an Order in Council any of the large number of English and Scottish local government acts contained in a schedule to the Act. The Probate Act 1892, gave power to Her Majesty in Council to extend that act to any British Possession which had made adequate provision for the recognition of all probates and letters of administration granted by the courts of the United Kingdom.

More important from the standpoint of domestic administration are the many instances in which administrative officials have been authorized to determine the subjects to which an act applies. This power has been delegated to administrative officials on many occasions. The Trade Boards Act, 1909, originally applied to four trades. It has been applied to other trades, however, by provisional order under the terms of the act. The Trade Boards Act, 1918, authorizes the Minister of Labour to apply by special order the Act of 1909 to any specified trade to which it does not apply "if he is of opinion that no adequate machinery exists for the effective regulation of wages throughout the trade, and that accordingly, having regard to the rate of wages prevailing in the trade, or any part of the trade, it is expedient that the principal act should apply to that trade."

Under Part II of the Safeguarding of Industries Act, 1921, the

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27 Ireland, of course, must now be exempt from the general statement.
28 61-62, V. c. 37, s. 104, Sch. 4.
29 55-56, V. c. 6, s. 1. See S. R. & O. 1921, pp. 1, 2, exercising the authority. See also School Teachers (Superannuation) Act, 1918, 8-9, G. 5, c. 55, s. 20—(2).
30 For a list of extensions of the principal act in 1919 see the Index to Statutory Rules and Orders in force, 1919 Factory and Workshop.
31 11-12, G. 5, c. 47, ss. 2, 3. The facts which the Board of Trade determine are that the price of the article is below the cost of production in
Board of Trade was given power, upon ascertaining the existence of certain facts, to bring into operation the portion of the act which provides for additional duties. There are many examples of this power in the Factory and Workshop Act, 1901, the National Insurance Act, 1911, and other important enactments.

The system of government in the United States presents little opportunity for granting authority to extend an act to a territory to which it does not apply under its own provisions. There is, however, a similar instance in the quarantine powers of the Secretary of Agriculture. An act of August 20, 1912, authorizes the Secretary of Agriculture to quarantine "any State, Territory or District of the United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within or throughout the United States . . . ." Thereupon the provisions of the act prohibiting the shipment or receipt of certain plants within the territory come into operation.

There are several instances, however, of the power to determine the application of an act. This power is usually made contingent upon the existence of facts specified in the act. An historical example of the use of this power is found in the authority given by Congress to the President on May 1, 1810, to revive a former act as to Great Britain or France, if either of these nations had not by a named day revoked or modified its edicts so as not to violate the neutral commerce of the United States. Similar examples are to be found in the reciprocity provisions of tariff acts. The Secretary of Agriculture, moreover, has power to determine whether the importation of plants or plant products not included in the term "nursery stock" as defined by statute will introduce injurious plant diseases or insect pests. Upon the promulgation of his decision the importation of such plants or plant products is prohibited by law.33 The Federal Reserve

the United Kingdom or below that cost due to depreciation in foreign currency. Before making any order the Board of Trade have to appoint a committee and consider their report upon these two points, and the order of the Board must be confirmed by a resolution of the House of Commons if sitting, or within one month after the beginning of its next session.

32 37 Stat. 318, c. 308, s. 8; also Act, March 4, 1917, c. 179, 39 Stat. 1165.
33 Act, August 20, 1912, c. 308, s. 5, 37 Stat. 316; see also section 7. See in this connection, 27 Stat. 416, c. 839, s. 9, by which the President has authority to suspend the importation of all or any class of animals if he is of opinion that such action is necessary to protect the animals of the United States against infectious or contagious diseases.
Board has power to add to the list of cities in which national banks may make loans secured by real estate.\textsuperscript{34} There is an example of this power in the authority of the Board of Pharmacy of New York to add to the list of poisons which are subject to certain regulations of the legislature.\textsuperscript{35} Generally speaking, however, this power has not been used extensively in the United States.

VI.

The Power to Define Words and Phrases Used in a Statute and Administrative Construction of Statutes

Modern statutes usually contain the definitions of important words or phrases used in them. In certain instances the power to define words and phrases used in a statute has been delegated to administrative officials.

The English National Insurance (Part II amendment) Act, 1914, gave the Board of Trade (the power has been transferred to the Minister of Labour) power to define “short time” as used in section eighty-one of that act. The Federal Farm Loan Act\textsuperscript{36} of the United States gave authority to the Federal Farm Loan Board to define the words “equipment” and “improvement” as used in section twelve of the act. These are two instances of power being directly delegated to define the meaning of words used in a statute.

Every administrative agency, however, has the power, implied in the authority granted to carry an act into operation, or to make rules and regulations for its execution, to define the meaning of words and phrases in the act which it administers. Otherwise the process of administration would be most difficult. This is recognized in the laws of New York as to the Department of Farms and Markets. The Commissioner of Farms and Markets, who is the head of that department, is required to hold a public hearing upon “publishing any definitions, rules or regu-

\textsuperscript{34} The Federal Reserve Act, 38 Stat. 251, as amended by 39 Stat. 752. See also an Act of Congress, 1910, 36 Stat. 847, c. 421, s. 1, by which the President has power to withdraw from settlement any public lands and reserve them for use as water power sites. See the same statutes, p. 858.

\textsuperscript{35} Laws of New York, 1910, c. 422, s. 1, ss. 238, 241 of the original law as amended.

lations covering the operation of this Article." In the Sanitary Code adopted by the Public Health Council of New York a list of diseases is prescribed which constitute infectious, contagious or communicable diseases within the meaning of the public health law and the Sanitary Code. In fact the first duty which a rule-making authority undertakes is to define any words or phrases which are not made clear in the statute itself. The courts, however, must always have the power of finally determining the meaning of words or phrases used in statutes if administrative officials have not been entrusted directly with that authority.

In the enforcement of statutes by administrative officials, problems of construction and interpretation inevitably arise. While not binding on the courts, the interpretations which administrative officials place upon statutes enforced by them are entitled to great weight, and are frequently decisive as to the legal construction of a statute in a judicial controversy. The question of the proper construction to be placed upon a paragraph of the tariff act then in force was raised in United States v. Hermanos y Compania, 209 U. S. 337. Mr. Justice McKenna, speaking for the Court, said at page 339:

"Counsel for the Government also points out that the provisions of the tariff act of 1875 and subsequent acts were substantially similar to paragraph 296, and that the Treasury decisions thereunder were in accordance with the interpretation for which the Government now contends. The first of these decisions was made in 1879. In re De Luze, T. D. 4060. The ruling was repeated in 1893. In re G. W. Sheldon & Co., T. D. 14461. And again in 1899. In re Wyman, T. D. 20843.

"We have said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution. Robertson v. Downing, 127 U. S. 607; United States v. Healey, 160 U. S. 136. And we have decided that the reenactment by Congress, without change, of a statute, which had previously received long continued executive construction, is an adoption by Congress of such construction. United States v. Falk, 204 U. S. 143, 152."

VII.

The Power to Delegate Authority

Administrative officials in the modern state have been given the power to delegate authority to act.

37 Consolidated Laws of New York, 1909, Agricultural Law, Article 8, s. 135, as amended by Laws of 1922, c. 48.
The close relation between central and local government in Great Britain has made this form of administrative action especially practicable. The central administration has been given wide and numerous powers to grant local government agencies authority to act. Under the Diseases of Animals Act, 1894, the Minister of Agriculture and Fisheries may empower a local authority to make regulations for any of the purposes of that act. During the war many powers and duties were delegated by the Board of Agriculture and Fisheries to local authorities. Most of them have now been repealed. Some, however, have been made permanent by the Agriculture Acts, 1919-1921. The Minister of Health may constitute port sanitary authorities or invest them with any powers given by the Public Health Acts or by the Infectious Disease Prevention Act, 1890. He may also declare the county council to be an authority to enforce regulations under the Public Health Act to prevent the spread of cholera and other contagious diseases. He may make regulations requiring county and county borough councils to take measures to prevent the spread of venereal diseases. Under the Land Drainage Act, 1914, the Ministry of Agriculture may constitute and empower a body for the purpose of executing any work of drainage, embankment or defense against water. Under the Electric Lighting Acts, as amended by the Electricity (Supply) Act, 1919, the Board of Trade (the power is now transferred to the Ministry of Transport) was given power to grant authority to borough and urban or rural district councils to supply electricity. Many more examples of this important power of the administration in Great Britain may be found in Wright and Hobhouse, “Local Government and Local Taxation in England and Wales.” These illustrations are sufficient to show, however, that the central administration grants authority in two different instances. It grants powers and duties to local authorities as agents of the central authority in the execution of the law. And it grants powers and duties to local authorities as such, doing what is often done by local acts of Parliament.

Due to the lack of strong centralized control over local gov-

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38 Section 22, (XXXIV).
40 Ibid., pp. 63-65.
41 Ibid., p. 152.
42 Ibid., p. 157.
ernment in the United States, especially with regard to the federal government, the power of granting authority to local agencies has been rarely delegated to the administration. There are several instances of the power to grant authority to private agencies, however. The Federal Reserve Board may authorize national banks to act as executors, administrators, registrars of stocks and bonds, guardians, assignors, receivers and committees of estates of lunatics. It also grants power to federal reserve banks to discount notes, drafts or bills of exchange for member banks, and it may grant authority to establish branch banks. The Federal Farm Loan Board has power to charter federal land banks, national farm associations and joint stock land banks and in its discretion to authorize them to issue stocks.

An excellent example of administrative authority to grant powers to private individuals, corporations, states and municipalities, is the licensing power of the Federal Power Commission. The Education Law of New York furnishes a good example of this power. The Board of Regents of the Department of Education has authority to incorporate with such powers and duties and subject to any limitations that it may prescribe any university, college, academy, library, museum or other institution for the promotion of knowledge.

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43 38 Stat. 251, s. 11 (12) as amended by acts of September 7, 1916, September 25, 1918, and March 3, 1919.
44 Ibid., s. 11 (m).
46 Act, July 17, 1916, c. 245, s. 17, 39 Stat. 375.
47 The Commission has power: "To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State, or municipality for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation, and for the development, transmission, and utilization of power across, along, from or in any of the navigable waters of the United States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided." The Code of Laws of the United States, p. 442.
48 Consolidated Laws of New York, 1909, Education Law, s. 59.
The Approval or Disapproval of the Acts of Local Authorities and Private Organizations

Closely related to the power of granting authority to act is the power of approving or disapproving the action of a local authority or of a private organization. It may be difficult to see the relation of this power to the legislative process, for it is not usual for a legislature to make its approval necessary to an administrative or other act. There is an analogy, however, in the practice of Parliament in confirming provisional orders and in the right of either House, contained in numerous statutes, to cause the annulment of certain rules and orders adopted by administrative officers. The power is related to the legislative process in this way. The approval of a rule or order made by a local authority or private organization is merely a part of the process of making the rule or order. The approving authority is a component part of the rule-making authority.

There are many instances of this power in Great Britain. A few of them may be cited to give a clearer idea of its nature. Under the Metropolitan Commons Acts, 1866 to 1890, the Minister of Agriculture approves or disapproves of the various schemes for the management and regulation of commons. An Act of 1843\(^4\) gives the justices in petty sessions the power to make rules as to the conduct of theatres and the Home Secretary has authority to alter or rescind them. A local authority by an order confirmed by the Minister of Health may declare a trade or business to be offensive and may make by-laws as to that business or trade.\(^5\)

Under the Public Health Act, 1875, the local authority, with the approval of the Minister of Health, may make regulations as to the removal of infected persons from ships.\(^6\) In fact all by-laws made under the Public Health Act, 1875, must be approved by the Minister of Health.\(^7\) All by-laws made under the Education Act 1921,\(^8\) respecting the attendance of children at

\(^{4}\) 6-7 V. c. 68, s. 9.
\(^{5}\) 7 Edw. 7, c. 53, s. 51; Public Health Act, 1875, ss. 112, 113.
\(^{6}\) S. 125.
\(^{7}\) S. 184. See the Public Health (Confirmation of by-laws Act, 1884, 47 V. c. 12, s. 3.)
\(^{8}\) 11-12 G. 5, c. 51, ss. 46, 48.
school must be approved by the Board of Education. The power also includes the authority to approve or disapprove various schemes made by local authorities under the Housing Acts, Endowed Schools Acts and other statutes.

Various activities undertaken by private organizations or institutions are made subject to the approval of administrative officials. The Minister of Agriculture approves or disapproves of the sale, purchase and exchange of property, improvement loans and other transactions as to the university and college estates under the University and College Estates Acts, 1858 to 1898. The Railway Regulation Act, 1840, requires all by-laws made by railway companies to be laid before the Board of Trade and they do not become effective until two months thereafter, within which time the Board of Trade may disallow them. The regulations as to the carriage of explosives made by harbour authorities or canal and railway companies must be sanctioned by the Board of Trade. The housing schemes made by housing trusts or public utilities societies must be approved by the Minister of Health.

In the federal government of the United States there are several instances of the power to approve rules or other acts of private organizations. The national administration, however, possesses no power to approve the action of local authorities.

The Interstate Commerce Commission approves, disapproves or amends the rules adopted by common carriers as to the inspection of locomotive boilers under the Boiler Inspection Act, 1911. The Federal Reserve Board with the concurrence of the Comptroller of Currency approves the reduction in capital stock by national banks. The Federal Farm Loan Board approves the by-laws adopted by land banks and may review and alter the rate of interest charged by such banks.

In numerous instances state administrative officials are given the power to approve or disapprove the acts of local authorities. In New York, for example, Civil Service regulations adopted by municipal Civil Service Commissions must be approved by the State Civil Service Commission. In Indiana the approval of

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54 3-4 V. c. 97, s. 7.
55 Act, 1875, 38-39 V. c. 17.
56 Housing Act, 1919.
57 39 Stat. 360, ss. 4, 13.
58 Laws of 1909, c. 15, s. 11, as amended.
the State Board of Tax Commissioners is required before school corporations in first-class cities may make temporary loans.\(^6\)

Various powers of approving the action of private organizations have been granted to the administration in the State of New York. The approval of the Public Service Commission must be obtained before any construction or extension of a railroad or street railroad may be undertaken.\(^6\) No franchise or any right under a franchise as to a railroad may be transferred without the Commission's consent;\(^6\) nor may any railroad corporation or street railroad corporation acquire any stock of another similar corporation without its sanction.\(^6\) The Commission also approves the issue of stocks, bonds and other forms of indebtedness by common carriers.\(^6\) Under the Education Law the Commissioner of Education approves the plans and specifications of school buildings constructed in the state.\(^6\) The approval of the Superintendent of Banks is necessary to change the location of a bank under his jurisdiction.\(^6\)

IX.

*Executive Regulations and Orders*

One of the most important parts of administrative legislation is executive regulations and orders. These regulations and orders are adopted by the administration pursuant to law to put into actual operation the declared will of the legislature. They may be divided into three classes: (a) rules and orders as to procedure and the conduct of business; (b) rules and orders as to the organization of administration; and (c) rules and orders as to the assignment of powers and duties to administrative officers. A statute to be entirely complete in itself should contain

\(^{59}\) Acts, 1920, p. 120. See generally the powers of the State Board of Tax Commissioners, Acts 1919, p. 198, as amended. In Illinois plans for the construction or improvement of county, city or village jails, almshouses, infirmaries, houses of correction or workhouses must be submitted to the Department of Public Works for criticisms and suggestions. Laws, 1911-1912, p. 66, s. 32.

\(^{60}\) Laws of New York, 1921, c. 134, s. 33.

\(^{61}\) Ibid., s. 34.

\(^{62}\) Consolidated Laws, 1919, Public Service Commission Laws, s. 54.

\(^{63}\) Laws, 1921, c. 134, s. 35.

\(^{64}\) Consolidated Laws, 1919, Education Law, Article 16.

\(^{65}\) Laws of 1914, c. 369, s. 50.
these regulations and orders. But in modern legislation it has been deemed expedient to delegate authority to make them to the administration. This authority is contained either in a special clause granting a particular power to make rules as to forms to be used or procedure to be followed, or in a general clause such as that contained in the Companies (Consolidation) Act, 1908, by which the "Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England." A provision similar to this is quite frequent in modern legislation in Great Britain and the United States.

(a) Procedure and the conduct of business. The power to make rules of procedure is chiefly exercised by those administrative agencies whose duties are of a quasi-judicial character, such as the Rates Tribunal in England, the Interstate Commerce Commission and Federal Trade Commission in the United States and the Public Service Commission and Department of Labor of the State of New York. These rules correspond to the rules of procedure adopted by courts of law. They are made in accordance with powers, usually of a very wide character, delegated by the legislature.

Rules for the conduct of business in an administrative department are not restricted to the special field of quasi-judicial business. They apply to any form of business which a department is empowered to transact. Rules of procedure are but a special form of this class of administrative legislation. They include also the regulation of the relations of the individual or organization with a department in the transaction of business which is of a ministerial character or which is undertaken in the performance of educational services.

66 8 Edw. 7, c. 69, s. 237—(1).
67 This grant of authority frequently includes the power to prescribe the details of a general statutory principle. See in this connection the "necessary and proper clause" section of the Act passed by Congress creating the Federal Power Commission, post, page.
(b) Organization. The organization of an administrative agency is largely under the control of the administration. The rules and orders made in pursuance of these organization powers are very important in the execution of the functions of the state as outlined by the legislature. Statutes often prescribe the organization of an administrative department in a general way. The great part of the detailed organization is, however, left to the administration. Even when a statute sets up a particular organization, the administration is charged with bringing that organization into being. For instance, an act of Congress, August 24, 1912,\(^69\) provided for the reorganization of the customs service so as to bring its cost within $10,500,000. The President was authorized to consolidate or abolish collection districts, ports and sub-ports of entry, to dispense with needless officials and to reduce excessive rates of compensation. The act, furthermore, established forty-nine collection districts and made certain other provisions as to organization. A good example in Great Britain is the Unemployed Workmen Act, 1905,\(^70\) which was passed with a view to establishing organizations for the provision of employment or assistance to unemployed workmen. This act gave power to the Local Government Board to set up a board for London and distress committees for city and metropolitan boroughs, and also authority to establish distress committees with powers of the central board for larger boroughs and urban districts. Likewise, the Minister of Labour has authority to make regulations for the establishment and constitution of Trade Boards under the Trade Boards Acts.\(^71\) Many examples of the organization of administrative departments by administrative officers in this country are to be found in the temporary agencies established during the war.\(^72\)

\(^{69}\) 37 Stat. 434, c. 355.

\(^{70}\) 5 Edw. 7, c. 18, ss. 1, 2. See the Organization (Unemployed Workmen) Establishment Order, 1905, S. R. & O., 1905, p. 1347; The Urban Distress Committees (Unemployed Workmen) Order, 1905, S. R. & O., 1905, p. 1358.

\(^{71}\) For a list of regulations made by the Board of Trade and the Minister of Labor as to trade boards, see S. R. & O., Index, 1919, p. 967. See in this connection the power of the Industrial Commissioner of New York to establish and maintain public employment officers. Laws of New York, 1921, c. 50, s. 21—(7).

\(^{72}\) See Willoughby, Administration in War Time and After, and the various acts in Great Britain like the Ministry and Munitions Act and the Ministry of Shipping Act.
(c) The allocation of powers and duties to administrative officials. The power to make rules prescribing the powers and duties of administrative officials within a department or agency is closely related to the power to prescribe administrative organization. An example of the exercise of this power is found in the rules adopted by the Department of Agriculture in regard to the inspection of seed imported into this country. This type of rule and regulation is not directed to private individuals or associations, but to the officers of a department on whom such rules and regulations are binding. Although such rules and regulations are often irritating to private individuals who seek to move an administrative officer to action, it must be remembered that we are living under a government of laws and not of men.

X.

The Power to Prescribe the Details of Rules of Conduct Provided by Statutes

The power to complete the legislative principle or rule of conduct established by a legislative body has, in many instances, been delegated to the administration in the modern state. This takes the form of fixing standards and prescribing in detail the statutory rule which has only been formed in general terms.

An important part of modern legislation requires that standards, often of a scientific nature, be established. If the state undertakes to enforce proper ventilation in factories, some standard of ventilation must be set; if it attempts to prevent the sale of impure and misbranded foods and drugs, some standard of purity and some proper form of marking must be established; or if it seeks to require safety appliances, there must be some standard by which appliances may be adjudged safe or unsafe. The powers and duties of determining standards such as these have been devolved upon the administration.

In Great Britain, for instance, the Home Secretary has power under the Factory and Workshop Act, 1901, to prescribe a standard of sufficient ventilation for any class of factories and workshops;\textsuperscript{73} to determine what is sufficient and suitable accommodation in the provision of sanitary conveniences;\textsuperscript{74} and to deter-

\textsuperscript{73} See S. R. & O., Rev., 1904, IV, p. 4.

\textsuperscript{74} See Sanitary Accommodation Order, S. R. & O., Rev., 1904, IV, p. 5.
mine what is suitable and sufficient bathing accommodation under the Coal Mines Act, 1911.\textsuperscript{75}

The chief example in the national administration of the United States is the standard safety appliances fixed by the Interstate Commerce Commission under the Safety Appliance Acts.\textsuperscript{76} Other instances of this power are the powers of the Bureau of Standards, the authority of the Tea Board to determine standards of purity for imported tea,\textsuperscript{77} and the power of the Secretary of Agriculture to fix the standard of fruit baskets and containers,\textsuperscript{78} and of grains,\textsuperscript{79} and the official grades of cotton.\textsuperscript{80}

\textsuperscript{75} The Food and Drugs (Adulteration) Act, 1928, Section 7, provides:

"7.—(1) The Minister of Agriculture and Fisheries may, after such inquiry as he deems necessary, make regulations for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese, or what proportion of any milk-solid other than fat in any sample of butter or milk-blended butter shall for the purposes of this Act raise a presumption, until the contrary is proved, that the milk, cream, butter, cheese or milk-blended butter is not genuine or is injurious to health, and an analyst shall have regard to such regulation in certifying the result of an analysis under this Act.

"(2) The Minister of Health may, after such inquiry as he deems necessary, make regulations for prohibiting the use as a preservative of any substance specified in such regulations in the manufacture or preparation for sale of butter, margarine, or milk-blended butter, or for limiting the extent to which, either generally or as regards any particular substance or substances, preservatives may be used in the manufacture or preparation for sale of butter, margarine or milk-blended butter.

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"(4) Any person who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any butter, margarine, or milk-blended butter which contains a preservative prohibited by a regulation under this section, or an amount of a preservative in excess of the limit allowed by any such regulation, shall be guilty of an offence."

The act prescribes the penalty of a fine and also imprisonment in certain cases for the offense here defined.

\textsuperscript{76} See the Safety Appliance Standards Order, Lapp, Federal Rules and Regulations, p. 450.

\textsuperscript{77} Act, March 2, 1897, c. 358, s. 3, 29 Stat. 605. This act prohibits the importation of substandard teas.

\textsuperscript{78} Act, August 31, 1916, 39 Stat. 673. See rules and regulations made under this Act, Lapp, Federal Rules and Regulations, p. 197.

\textsuperscript{79} United States Grain Standards Act, 1916, 39 Stat. 483, ss. 2, 3. See Lapp, p. 64.

\textsuperscript{80} Act, May 23, 1908, c. 192, 35 Stat. 256.
The power of fixing standards is no less important in state administration in the United States. The New York Public Service Commission has authority to fix and change standards of purity, illuminating power, heating power and measurement for gas.\(^8\) It also fixes standards of efficiency of electric supply systems.\(^2\) The Industrial Board of the Department of Labor has power to make regulations prescribing standards for the construction, equipment and maintenance of factory buildings.\(^3\) It also has power to fix standards of ventilation, temperature and humidity in factories.\(^4\)

These illustrations are sufficient to show the importance in the modern state of the administrative power to fix standards. Without this power many of those statutes which are so important to the health, safety and economic welfare of the community would be impossible to execute.

The power to prescribe in detail a rule of conduct which has been established in general terms is closely related to the determination of standards. The regulation of rates and practices of public utilities in Great Britain and the United States is a form of this power to prescribe in detail the legislative will. For instance, in the Interstate Commerce Act passed by Congress in 1887, all interstate common carriers were required to observe reasonable rates, practices and regulations. By a subsequent amendment to this act the Interstate Commerce Commission was given power to fix just and reasonable minimum or maximum rates and practices which a given common carrier should observe. Thus the exact meaning and application of just and reasonable rates and practices is left to the Interstate Commerce Commission to prescribe. This illustration is typical of the regulation of public utilities in the State of New York and of railways by the Rates Tribunal in Great Britain. The power to fix minimum wages exercised by Trade Boards with the approval of the Minister of Labour under the British Trade Boards Acts, 1909 and 1918, is also a good example of this power.\(^5\)

An illustration from the powers of the Industrial Board of

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\(^8\) Laws of New York, 1921, c. 134, s. 39.
\(^2\) Ibid.
\(^3\) Consolidated Laws of New York, 1909, Labor Law, s. 272—(5).
\(^4\) Ibid., s. 299—(4). The Department of Farms and Markets has power to determine the grades of farm products. See McKinney's Consolidated Laws of New York, Book 18-A, Farms and Markets Law, s. 22—(25).
\(^5\) See in this connection the Coal Mines Act, 1911, s. 53—(1) by which the Secretary of State has power to prescribe a general code of signals for coal mines.
New York will show more clearly the extent of the authority to prescribe the details of a general principle adopted by the legislature. The Labor Law, section 20-B, provides as follows:

"Protection of employees.—All factories, factory buildings, mercantile establishments and other places to which this chapter is applicable, shall be so constructed, equipped, arranged, operated and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein. The Industrial Board shall from time to time make such rules and regulations as will carry into effect the provisions of this section."

In pursuance of this authority the Industrial Board has adopted the Rules relating to the Milling Industry and Malt-house Elevators. These rules minutely regulate the milling industry so as to protect employees. They require the elimination of horizontal ledges in buildings; they require certain arrangements and constructions as to door, ceilings, walls and furnaces for protection against fire. They prohibit the use of matches and lighters. They regulate the illumination of mills, the use of belt conveyors for receiving grains and covers for hoppers. They require measures to be taken to eliminate dust.

Thus, by means of this power a general principle of law is reduced to practical terms which are possible to execute. As the law stands by itself, the owner as well as the administrative official would be in great doubt as to what measures should be taken to execute its provisions although the principle established is quite clear.

In this connection it is interesting to note the "necessary and proper clause" contained in the Act creating the Federal Power Commission. That act authorizes the Commission "to perform any and all acts, to make such rules and regulations, and to issue such orders not inconsistent with this chapter as may be necessary and proper for the purpose of carrying out the provisions of this chapter."86

XI.

The Power to Make Rules and Orders for Particular Purposes Designated by Statute

Another important part of administrative legislation is the regulations and orders adopted in pursuance of a statutory

power to make regulations and orders for specific ends or purposes designated by law. The declaration of principle and its particular application are left to administrative officials. The only limitation is that the administrative action shall accomplish the ends prescribed by statute.

The classic illustration in Great Britain is the Defence of the Realm Consolidation Act, 1914, and the Regulations adopted under it. His Majesty in Council was given authority "during the continuance of the war to issue regulations for securing the public safety and the defence of the realm."87 Thus any order or regulation could be made during the war which in any way promoted the public safety or defence of the realm. This was a wartime measure, but there are other examples of a similar nature, although not so wide in the authority conferred nor holding such important consequences for the welfare of the British nation. The Home Secretary has power to make regulations to secure the safety of persons employed in dangerous trades.88 He may make orders for securing the welfare of workers employed in certain factories and workshops.89 He may make general regulations requiring the provision for rescue and aid in case of accidents in mines, and for the prevention of accidents.90 The Board of Education has power to prescribe regulations for paying grants to local education authorities and to attach such conditions and limitations as it thinks fit.91 In pursuance of this general power the Board has brought the whole education of England and Wales under its regulation. The Minister of Health under the Public Health Act, 1875, may make regulations as he sees fit for the treatment of persons affected with any epidemic, endemic or other infectious diseases, and for the prevention of the spread of such diseases.92 When any part of England appears to be affected by or threatened with any such disease, he may make regulations for the speedy interment of the dead, for

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87 5 g. 5, c. 8, s. 1—(16). See the Defense of the Realm Manual, 8th ed., for regulations and orders made under this Act.

88 Factory and Workshop Act, 1901, ss. 77, 80, 82-86. For a list of regulations made under this provision see the Index to S. R. & O., in force 1919—, 322.

89 Act, 1916, 6-7 G. 5, c. 31, s. 7—(1). See S. R. & O., 1929, I, p. 646.


91 Education Act, 1921, 11-12, G. 5, c. 51, s. 118—(1). This power was also conferred by former education acts.

92 S. 180.
house to house visitation and for the provision of medical aid, the promotion of cleansing, ventilation and disinfection and guarding against the spread of diseases.\textsuperscript{93} Thus, in time of peace as well as in time of war, the British administration is given

\textsuperscript{93} S. 134. See in this connection the Public Health Regulations as to Food Act, 1907, 7 Edw. 7, c. 33, s. 1. The Minister of Health has authority to make regulations "for the prevention of danger arising to public health from the importation, preparation, storage and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption." See also the Corn Production Act, 1917, 7-8 G. 5, c. 46, s. 7, under which the Minister of Agriculture may make orders requiring the proper cultivation of land. See Butter and Margarine Act, 1907, 7 Edw. 7, c. 21; the Maintenance of Live Stock Act, 1915, G. 5, c. 66. See also the Motor Cars (Excessive Noise) Regulations, 1929, made by the Minister of Transport under the Motor Car Acts, 1896 and 1903, and various other statutes. Chitty's Statutes, 6th ed., vol. 26, pages 1207-1208. These regulations provide:

"1. These Regulations may be cited as 'The Motor Cars (Excessive Noise) Regulations, 1929', and shall come into force on the first day of August, 1929.

"2. No person shall use or permit to be used on any highway any motor car which causes any excessive noise, either directly or indirectly, as a result of

"(a) any defect (including a defect in design or construction, lack of repair or faulty adjustment) in the motor car or in any vehicle drawn thereby or in any part or accessory of such motor car or vehicle drawn thereby, or

"(b) the faulty packing or adjustment of the load of such motor car or vehicle drawn thereby.

"Provided that it shall be a good defense to proceedings taken under this Regulation—

"(I) to prove that the noise or continuance of the noise in respect of which the proceedings are taken was due to some temporary or accidental cause, and could not have been prevented by the exercise of due diligence and care on the part of the owner or driver of the motor car; or

"(II) in the case of proceedings against the driver or person in charge of a motor car who is not the owner thereof, to prove that the noise arose through a defect in design or construction of the motor car, or through the negligence or fault of some other person whose duty it was to keep the motor car or vehicle drawn thereby in proper condition or in the proper state of repair or adjustment, or properly to pack or adjust the load of such motor car or vehicle drawn thereby, as the case may be, and could not have been prevented by the exercise of reasonable diligence and care on the part of such driver or other person in charge of the motor car.

"3. When a motor car is stationary on any highway no person shall use or permit to be used in connection therewith any instrument provided for the purpose of giving audible warning, except where such use is necessary on the grounds of safety."
wide powers to make regulations and orders for the accomplishment of ends designated by statutes.

This power is not employed so frequently in the federal administration of the United States. There are, however, certain instances of its use. The Interstate Commerce Commission has power to make regulations for the safe transportation of explosives and other dangerous articles in interstate commerce.94 The Federal Reserve Board has power to make regulations for the issue and retirement of federal reserve notes.95 The Secretary of the Treasury may make rules and regulations for securing sanitary conditions of vessels and their cargo and passengers.96 The Secretary may also make rules and regulations for controlling and preventing the spread of venereal diseases in interstate traffic.97

The power, however, is more important in state government. For instance, in the State of New York the Public Health Council virtually has authority to adopt regulations and orders, which it sees fit, for the promotion and protection of the public health of the State. These regulations known as the Sanitary Code, "may deal with any matter affecting the security of life or health or the preservation and improvement of public health in the State of New York."98 The Industrial Board of the Department of Labor also has wide powers. It may make regulations for the "proper sanitation in all places to which this chapter applies and for guarding against and minimizing fire hazards"; relating to personal injuries and diseases in all places to which the chapter applies with respect to "factory buildings and mercantile establishments, the arrangement and guarding of machinery and the storing and keeping of property and the place in which and the methods and operations by which trades and occupations may be conducted and the conduct of employers, employees and other persons."99 The Commissioner of Farms and Markets may make regulations to prevent the introduction into the state of diseases injurious to animals and to suppress such diseases existing in the state.100 He may regulate the san-

94 35 Stat. 1134, as amended by 41 Stat. 1444, s. 233.
95 Act, December 23, 1913, c. 6, s. 11—(d).
97 Act, July 9, 1918, c. 143, XV, ss. 1-8.
98 Consolidated Laws, 1909, c. 40, s. 2-h, as amended by Laws of 1913, c. 559, s. 2. See the Sanitary Code published by Public Health Council.
99 Laws of 1921, c. 50, s. 28.
100 Laws of 1922, s. 48, amending Agricultural Law, s. 72.
tation of buildings used for housing animals to prevent the spread of infectious diseases. 101 He may regulate the production of milk to insure proper sanitation. 102 The Superintendent of Banks may make orders under certain conditions for requiring banks to keep convenient and accurate accounts. 103

No one example will give a true description of the extent of this power in modern administration. In both Great Britain and the United States it has been employed particularly in the fields of public health and public safety. It will be observed that these are fields which are least susceptible to general regulation. It has become impossible to provide for the health and safety of the community by general principles adopted by legislative bodies. Legislatures can, however, and it is within their practical powers to, prescribe the end which it is desired to be accomplished. The power to prescribe the measures which shall be undertaken to accomplish this end must, in many instances, be delegated to the administration.

XII.

The Power to Regulate Subjects Designated by Statute

The distinction between regulations made for a prescribed purpose and those made for a prescribed subject lies in the different form of limitation upon the rule-making authority in each case. In the former, the administration is limited by the consequences of its own acts. Its acts must be directed towards the accomplishment of a designated end. In the latter, the administration is limited only by the trade, disease, act, etc., which is subject to its regulations and by the general purposes of the statute delegating authority. It cannot go beyond.

The power of regulation as to a given subject is perhaps the widest power which has been conferred upon the administration. There is no guiding principle or purpose except the general purpose of the act delegating the power.

A list of some of the powers of the Minister of Agriculture and Fisheries of Great Britain under the Diseases of Animals

101 Ibid., s. 75.
102 Ibid. See Generally the Farms and Markets Law of New York.
103 Laws of 1914, c. 369, s. 56—(4).
104 57-58 V. c. 57, s. 22.
The Minister has power to make regulations:

“(i) for prescribing and regulating the publication of placards, handbills or otherwise in the immediate neighborhood of a place or area declared infected, of the fact of such declarations;
“(ii) for prohibiting or regulating the movement of animals and persons into, within, or out of an infected place or area;
“(iii) for prescribing and regulating the isolation of animals being in an infected place or area;
“(iv) for prohibiting or regulating the removal of carcasses, fodder, litter, utensils, pens, hurdles, dung, or other things into, within and out of an infected place or area;
“(v) for prescribing and regulating the destruction, burial, disposal, or treatment of carcasses, fodder, litter, utensils, pens, hurdles, dung or other things being in an infected place or area, or removed thereout;
“(vi) for prescribing and regulating the cleansing and disinfection of infected places and areas or parts thereof;
“(vii) for prescribing and regulating the disinfection of the clothes of persons coming in contact with or employed about diseased or suspected animals, or being in an infected place, and the use of precaution against the spreading of disease by such persons;

* * * * * * * * * * * * * * *"

The exercise of these powers are, of course, subject to the general purposes and provisions of the act, and no rule which contravened these purposes or which could in no way pertain to the prevention or eradication of diseases among animals would be upheld by the courts.

Another good example of this power is contained in the Coal Mines Act, 1911. Under it the use of electricity in any mine is made subject to the general regulations of the Home Office. If, however, these regulations serve no purpose of the act, they would doubtless be held illegal.

Instances of this power in federal administration are the authority of the Federal Power Commission to prescribe a uniform system of accounts for licensees, and the powers of the Federal Radio Commission.

105 1-2 G. 5, c. 50, s. 60—(4). See S. R. & O., 1913, p. 680, Rules 117-139. 106 The Code of Laws of the United States, p. 443. 107 The Commission has power to: “(a) Classify radio stations; (b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class; (c) Assign bands of frequencies or wave lengths to the various classes of stations, and assign frequencies or wave lengths for each individual station and determine the power which
A very good example of this broad power in state administration is the authority of the State Board of Pharmacy in the State of New York: "(a) to regulate the practice of pharmacy; (b) to regulate the sale of drugs, chemicals, medicines and poisons; (c) to regulate the employment of apprentices and employees in pharmacies; (d) to regulate the working hours and sleeping apartments of employees in pharmacies; (e) to regulate and control the character and standard of drugs and medicines compounded and dispensed in the state . . .; (f) to regulate the selecting of poisons and to adopt schedules . . .". It is difficult to conceive of a broader grant or power to the administration than this. The Board is given practically unlimited powers of regulation as to the business of pharmacy. So long as the Board stays within the prescribed limits and does not abuse its discretion there are no powers which it cannot exercise.

It is interesting to compare the power to make regulations for specific purposes and the power to regulate prescribed subjects with the former power of the Crown to legislate by procla-

each station shall use and the time during which it may operate; (d) Determine the location of classes of stations or individual stations; (e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein; . . . (g) Have authority to establish areas or zones to be served by any station; (h) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting; (i) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable." Radio Act of 1927, Sec. 4.

108 Laws of New York, 1910, c. 422, s. 1.
109 This remarkable provision is found in the Education Law, McKinney's Consolidated Laws of New York, Book 16, c. 46: "Subject and in conformity to the constitution and laws of the state the regents (the Board of Regents of the University of New York) shall exercise legislative functions concerning the education system of the state, determine its educational policies and except as to the judicial functions of the commissioner of education establish rules for carrying into effect the laws and policies of the state relating to education and the powers, duties and trusts conferred or charged upon the University. But no enactment of the regents shall modify in any degree the freedom of the governing body of any seminary for the training of priests or clergymen to determine and regulate the entire course of religious, doctrinal or theological instructions to be given in such institution. No rule by which more than a majority vote shall be required for any specified action by the regents shall be amended, suspended or repealed by a smaller vote than that required for action thereunder."
mation. The widest statutory authority which the Crown had was contained in the Statute of Proclamations, 1539. The power of the King under this statute far exceeded any of the powers possessed by the modern administration. In fact, there was no limit whatever either as to the purpose for which a proclamation might be made or as to the subjects with which a proclamation might deal. The only limitation upon the authority of the Crown was that the proclamation made under the act should not be "prejudicial to any person's inheritance, offices, liberties, goods, chattels or life." It is clear from the above analysis that modern legislatures have not gone so far as this in delegating power to the administration.

It is elementary that the power of Parliament is unlimited. The separation of powers is neither a theory of government, a principle of constitutional law, nor a constitutional custom in Great Britain. There are no constitutional limits on the powers which Parliament may delegate to administrative officials. In the United States, however, the separation of powers and the non-delegability of legislative power are not only parts of our traditional political philosophy, but also are rules of law enforceable in the courts.

From an analysis and comparison of the types of powers of a legislative nature conferred upon administrative officials in the two countries, one is forced to the conclusion that the restraining effect of the constitutional principles of the separation of powers and the non-delegability of legislative power has in practice been slight. While it is probably true that the quantum of administrative powers delegated in Great Britain is greater because of the greater amount of social legislation and the relationship between central and local government, the important thing is that the same types of powers have been delegated in both countries.

It may be argued that the principles of the separation of powers and the non-delegability of legislative power have in no way been violated by the delegation of powers of a legislative nature to administrative officials in this country. No attempt has been made to discuss the judicial interpretation and application of these two constitutional principles in this country. Nothing is more familiar, however, to the student of American constitutional law than the fact that time and circumstance make a vast difference in the application of constitutional principles.

110 31 H. VIII, c. 8.
It may be that our courts, influenced by the exigencies of modern government arising out of the increased functions of the modern state, are adapting the principles of the separation of powers and the non-delegability of legislative power to time and circumstance while paying lip service to the theories of the Fathers of our constitutions. However this may be, it is submitted that actual practice in government is as important in determining constitutional principles as judicial decisions. In actual practice one wonders if the Fathers of our state and federal constitution would not say that our administrative and executive officials are legislating.