

NOTES *and* COMMENTS

The Proper Place Of Administrative Law In Our System Of Government

By CARLOS LEDESMA

THE Philippines is a republican state (*Art. II, section 1, Philippine Constitution*). This being so, the doctrine of separation of powers and the doctrine of prohibition against the delegation of powers which are its indispensable adjunct, are inherent in our constitutional system of government. The doctrine of separation of powers is based upon the conception that arbitrary government often results when the same person or the same body of officers were to exercise all the powers of government (*Sinco, Phil. Govt. and Political Law*) in short it arose from the fear of the absorption of one of the three branches of government by another. With this, goes as a corollary, the fundamental rule of constitutional law that one department of government may not delegate to another department the powers entrusted to it by the constitution. (Thus), broadly stated, are the fundamental maxims of our constitutional system of government to which we must adhere in order that our government will forever 'be a government of laws, and not of men.'

However, according to Cardozo, "we live in a world of change. If a body of law were in existence adequate for civilization today, it could not meet the demands of tomorrow. Society is not constant. So long as it is in-

constant there can be no constancy in law." This eminent jurist was probably thinking of the tremendous changes brought about in the American constitutional system, when he wrote these words. These changes came as a result of the ever increasing complexity of life due to advances in the adaptation of scientific principles to bring about speed and ease of living, and an ever-growing social consciousness on the part of the people. From being a negative force in respect to its control of the activities of the individual citizens composing the state, government has in recent years become a positive force, the result being a steady growth of governmental regulation of the activities of the citizens composing the state. This increased governmental regulation took the shape of administrative agencies, boards, and commissions with power to promulgate rules and regulations 'having the force of law' (to borrow a common expression of the Legislature). Thus, was evolved a new phase of constitutional law, under the comprehensive term, Administrative Law.

Properly defined, "administrative law implies that branch of modern law under which the executive department of government, acting in a quasi-legislative or quasi-judicial capacity, interferes with the conduct of the in-

dividual for the purpose of promoting the well-being of the community." (Cuthbert W. Pound, *The Growth of American Administrative Law*, p. 110). The introduction of what has been called 'the administrative process' has worked changes in the established and classical concept of the maxim *delegata potestas non potest delegari* (attributed to Bracton) and has encountered a barrier in our constitutional doctrine of the 'supremacy of law'—which is the pith and core of Anglo-American jurisprudence.

Let us first examine the changes caused by the impact of the administrative process on the doctrine prohibiting delegation of legislative authority. According to one authority: "Before these agencies the old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the fight." (Elihu Root, *Public Service by the Bar, Addresses on Citizenship and Government*). At present, the Legislature, when legislating on matters which affect the public in general, in creating administrative boards and agencies, and giving to these bodies the power to promulgate rules and regulations, has resorted to the principle of "subordinate legislation," and courts have sustained the validity of such laws by giving 'prominence to the necessity of the case' provided 'an ascertainable standard' has been laid down by the Legislature. Said our Supreme Court: "Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, the rigidity of the separation of governmental powers has, to a large extent, been relaxed by permitting the delegation of

greater powers by the Legislature and vesting a larger amount of discretion in administrative and executive officials, not only in the execution of the laws, but also in the promulgation of certain rules and regulations calculated to promote public interest." (*Calalang vs. Williams et. als*, G. R. No. 47800, IX L. J. p. 10. In another case, it was stated that "there is a constantly growing tendency toward the delegation of greater powers by the Legislature, and toward the approval of the practice by the courts. In harmony with such growing tendency, this Court, since the decision in the case of *Compañia General de Tabacos de Filipinas vs. Board of Public Utility Commissioners*, 34 Phil. 136, relied upon by the petitioner, has, in instances, extended its seal of approval to the 'delegation of greater powers by the Legislature.'" (*Pangasinan Transportation Co. vs. Public Service Commission*, G. R. No. 47065, VIII L. J. p. 681,683 (citing *Dillon Catfish Drainage District. Bank of Dillon*, 141 S. E. 274, 277; *State vs. Knox County*, 54 S. W. 2d. 973, 976).

The only way to reconcile the doctrine laid down in these recent decisions, adopting the principle of 'subordinate legislation' with the theory of 'separation of powers' is by having a proper understanding of the true meaning of the latter. According to an authority on comparative constitutional law, the 'separation of powers' is "merely a formula, and formulas are not working principles of government." (*Doyen, of the Faculté de Droit, Université de Paris*). By Sir Henry Maine, following Madison, it has been called "a political doctrine, and not a technical rule of law." Nor has it been treated by the U. S. Su-

preme Court as a technical legal doctrine. As so well stated by Mr. Justice Cardozo, the basic constitutional doctrine of separation of powers is "Not a doctrinaire concept to be made use of with pedantic rigor. There must be sensible approximation, there must be elasticity of adjustment, in response to the practical necessities of government, which cannot foresee today the developments of tomorrow in their nearly infinite variety." (*Panama Refining Co. vs. Ryan, dissenting*, 293 U. S. 388, 440).

Turning now to the more difficult phase of the discussion as to the influence of administrative law, let us consider the question of the proper relationship of the courts with respect to the adjudications of administrative tribunals. And in this competition between administrative and legal justice, we find "a phase of the age-old struggle between discretion and fixed rule, between *vóus* and *éleikeia*, between equity and strict law." (*Dickinson, Administrative Justice and the Supremacy of Law*, p. 32). Hence is presented the question: to what extent should decisions of administrative bodies be reviewable by the courts—in short, 'the supremacy of law' (in Lieber's phrase) is being challenged by the administrative process.

In our constitutional system, 'supremacy of law' has long been regarded and accepted as the foundation-rock in the proper administration of justice. It is the matrix and the most inherent feature of Anglo-American jurisprudence. Dicey's explanation of the orthodox meaning of the phrase is: "We mean, in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct

breach of law, established in the ordinary legal manner before the ordinary courts of the land." (*Dicey, Law of the Constitution*, 8th ed. 1923, p. 183). Literally interpreted and applied, this doctrine would place judicial bodies in complete supremacy in the matter of adjudicating rights. No other agencies can substitute them, nor can they be prevented in deciding on all the questions incident to the judicial functions vested in them. This interpretation given by Dicey, has, however, not been accepted by courts, who for years have acknowledged that there are certain limitations to their power to review administrative adjudications. Dickinson says that "just in so far as administrative determinations are subject to court review, a means exists for maintaining the supremacy of law, though at once removed and as a sort of secondary line of defense. . . Administrative justice exists in defiance of the supremacy of law only in so far as administrative adjudications are final or conclusive, and not subject to correction by a law court." (*Dickinson, Administrative Justice and the Supremacy of Law, supra*).

In trying to find a reasonable and practicable solution to the question above propounded, it is necessary to have certain guideposts, certain principles to which we must adhere. Bearing in mind the advantages and disadvantages of courts on the one hand, and of administrative tribunals on the other (for a clear discussion, see *Dickinson, Administrative Justice and the Supremacy of Law*, pp. 12-15), a starting principle may be stated, by quoting Mr. Justice Brandeis: "The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule

of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly." (*St. Joseph Stockyards Co. vs. U. S.*, 298 U. S. 3884). So that in determining whether there should be judicial review of administrative determinations, it is submitted, that court review should be permitted in questions affecting constitutional rights; in all cases where it affirmatively appears that some rule of law has been ignored or misapplied; where it affirmatively appears in the record that there is no substantial evidence to support the findings arrived at—in short where questions of law are involved. Secondly, it should also be permitted where it is shown that the administrative tribunal has not functioned in accordance with the requirements of the law creating it, that is, with respect to the requirements of notice and hearing essential to due process in the cases where notice and hearing should be accorded. In passing, it may be stated, that notice and hearing are not always essential to the validity of certain administrative actions. It must never be lost sight of that judicial review is for the purpose of remedying the weaknesses inherent in the administrative process and in preserving the peculiar benefits of administrative action. Finally, it must be remembered that there are diverse and diverse kinds of administrative tribunals and that the nature of their functions differ, so that it is impossible to lay down uniform and general rules as to the extent of judicial review, for all these bodies. Each class must be viewed and examined apart from the others.

In the limited scope of this article, it is impossible to cover thoroughly all classes of administra-

tive bodies; discussion is confined to a few representative cases of administrative agencies, as they exist in the Philippines today.

The first class that we shall consider are those administrative agencies created by the Legislature in order to regulate businesses affected with a public interest, such as public service commissions. The practically unanimous decisions of our highest court as well as those American courts have laid down the rule that so long as there is any substantial evidence to sustain the findings of public service commissions, the court will not grant a review to alter the findings of the commissions. And it has been said that "substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (*13 Appalachian Electric Power Co. vs. National Labor Relations Board*, 4 Cir., 93 F. 2d 985, 989; *National Labor Relations Board vs. Thompson Products*, 6 Cir., 97 F. 2d 13, 15). As to regulations issued by the commission to govern future conduct with respect to discrimination and service, these are questions left wholly to the discretion of the commission; but another question is presented when the commission fixes a rate which public utilities do not wish to accept on the ground that it is "a confiscatory rate" and therefore, unconstitutional. The prevailing doctrine as enunciated by the United States Supreme Court in several cases (*Ohio Valley Water Co. vs. Ben Avon Borough*, 253 U. S. 287) is that in such a situation the court will review the administrative determination and decide according to its own judgment whether the rate fixed by the commission is reasonable or not. Ac-

ording to the Court, speaking through Mr. Chief Justice Hughes, the reason is: "But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards." (*St. Joseph Stockyards Co. vs. U. S.*, *supra*). Dissenters however, were not lacking. The criticism of Mr. Justice Brandeis is that this holding of the court, simply means giving the findings of an expert board less weight than is given to the findings of a jury. And Mr. Justice Cardozo pointed out, in another case, that administrative agencies were born of a need for developing a technique which differed from judicial litigation. For according to him, "the structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the commission by training and experience is qualified to form. It is not the province of a court to absorb this function to itself." (*Miss Valley Barge Co. vs. U. S.* 292 U. S. 282, 386.)

As to the requirement of notice and hearing, the rule was laid down by our Supreme Court in a recent case when it nullified a decision of the commission, and remanded the case for further proceedings on the ground that there was no notice nor opportunity given the petitioner to be heard or to present evidence. Said the court: "There are cardinal primary rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which in-

cludes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, in *Morgan vs. U. S.*, 304 U. S. 1, 58 S. Ct. 773, 999, 82 L. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.' Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. (*Morgan vs. U. S.*, 298 U. S., 80 L. ed.) In the language of this Court in *Edwards vs. McCoy*, 22 Phil. 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.' While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, at least when directly attacked." (*Pangasinan Transportation Co. vs. Public Service Commission*, *supra*; see also *Manila Trading and Supply Co. vs. Philippine Labor Union*, VIII L. J., p. 933).

The second class of administrative agencies are those created by the Legislature which entrust to them the carrying on of a portion of the business of government. Examples of these bodies are tax boards, customs boards, and immigration boards. As to tax boards and customs boards, courts have recognized the fact that nothing valuable will be added by review-

ing the valuations of these administrative agencies, and have therefore, refrained from passing judgment on the correctness of the valuations fixed by these agencies. Such is the doctrine laid down by the U. S. Supreme Court in the State Railroad Tax Cases. (92 U. S. 575). As to the complaint of arbitrariness, the Court answered it, speaking through Mr. Justice Holmes: "But the action does not appear to have been arbitrary except in the sense in which many honest and sensible judgments are so. They express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth. The Board was created for the purpose of using its judgment and its knowledge. Within its jurisdiction, except, as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The State has confided these rights to its protection and has trusted to its honor and capacity as it confides the protection of other social relations to the courts of law. (*Chicago, B & Q. Ry Co. vs. Babcock*, 204 U. S. 585).

As to the requirement of due process, the principle is that there is no requirement of notice and hearing for the individuals affected, unless, of course, the statute expressly so provides. In the case of *Tomlinson vs. Board of Equalization* (88 Tenn. 1, 12 U. S. 414, 6 L. R. A. 207), the court said: "To hold that it was the duty to permit the examination of witnesses offered by a complainant would imply a duty to the state and county to hear and examine witnesses to sustain the assessment. All this would imply a trial, and

a judgment upon weight of proof. The question of valuation is altogether a matter of opinion. Before questions of opinion the greatest diversity may be expected.

That each taxpayer should have the right to come with his witnesses, and have them heard, and be heard by counsel, would result in such delay and embarrassment as to amount to a great public peril with regard to the assessment of the public revenues. No legislative body could have seriously contemplated such a tribunal to determine a mere question of an excessive valuation for purposes of assessment. Occasional instances of excessive assessments may occur; but they had better be borne than that such a court should be created to settle them." The reason for this self-imposed determination of courts not to interfere, is that these agencies are concerned with carrying out the business of government; this is properly the field for the action of the executive branch of the government and naturally the courts should not step in except in positive instances of illegality, in which case, a question of law, is, of course, involved. (*Vda. e Hijos de P. Roxas vs. Rafferty*, 37 Phil. 957). In these cases, prompt and efficient action is necessary—and administrative action is the answer. With respect to immigration cases, the United States Supreme Court has declared valid statutes enacted by the U. S. Congress (the Chinese Exclusion Acts) which provide that the findings of administrative authorities shall be conclusive, notwithstanding that it is essentially a jurisdictional fact. (*U. S. vs. Ju Toy*, 198 U. S. 253). This conclusiveness, is of course, subject to the elementary rule, that there is no clear and positive abuse of discretion, and that a fair hearing was given

and full opportunity had to present evidence, and to consider the evidence given. (*Chin Low vs. U. S.* 8; *Lorenzo vs. McCoy*, 15 *Phil.* 560; *Ngo-Ti vs. Shuster*, 7 *Phil.* 365). The reason for granting court review in such cases, is due to the fact that personal freedom is involved, and because of a certain tendency on the part of immigration officials toward arbitrary action, resulting in a denial of due process to the petitioner. (*Kwock Jan Fat vs. White*, 253 *U. S.* 454).

The next class of administrative agencies to be considered are those created by the Legislature for the purpose of regulating private business and individuals, under the police power. According to an authority, "the system of administrative police regulation is supplanting the older method of regulation by the adjudication of private controversies precisely for the reason that there is need for more rapid, effective, and competent regulation of certain fields of human relations than can be administered through the courts. It has been applied only where there has seemed to be some special need for it." (*Dickinson, Administrative Justice and the Supremacy of Law*, pp. 253-254). Since these agencies are usually run by 'petty bureaucrats who are immune from the light of publicity which beats on the occupants of high office' and since individual citizens may likely find themselves subjected to a species of petty tyranny, there is need for judicial review of the decisions of these administrative tribunals, except in certain cases, to be pointed out later.

According to the same authority, three situations must be considered, in order to determine to what extent the decisions of these bodies are reviewable by the courts,

namely, (1) those which require expert knowledge, (2) those which require summary action, and (3) those which require neither. There may exist various combinations of the three.

Of the agencies functioning in the first, are those formed for the licensing of practitioners in technical occupations or learned professions, and boards to pass upon the condemnation of non-perishable goods and drugs. These cases call for scientific discretion and knowledge, and in this, the administrative agencies are well qualified, while courts are not. In such situations, the findings of these boards should not be reviewed by the courts, so long as they are reached in good faith, and there is substantial evidence to support the conclusions arrived at. It is also required that due notice and a fair hearing be given to the individuals affected—the reason being that property rights and liberty of action are being regulated.

Under the second situation—where summary action is necessary—are cases of the destruction of perishable food, or the enforcement of quarantine regulations. Here, administrative discretion must be accorded full play and action. For to allow court action before the step is taken, or to permit court review after the action is taken, would nullify the purpose of the Legislature in creating these agencies. (As to the question of compensation to an individual injured by erroneous exercise of discretion in such cases, it has been suggested by some writers that statutes be passed whereby such damages would be paid out of the whole public treasury.) The occasional injustice that may be done to an individual is far outweighed by the resulting ben-

efits to the community; hence, individual rights must yield to the principle of 'the greatest good to the greatest number.' In these cases, too, notice and hearing are not required, because to impose such a pre-requisite would hamper and nullify the object of the law in setting up such agencies.

The third situation comprises those cases where neither expert knowledge nor summary action is required; examples are cases of boards established to license common non-technical occupations, and those of administrative regulations for the abatement of nuisances. Here, since there is no need for prompt action and since it does not call for scientific discretion, there is no harm in allowing judicial review? On the other hand, judicial review is most valuable in order to insure that no injustice be done to an individual due to ignorant, oppressive or arbitrary actuations by petty office-holders. Naturally, too, there must be notice and hearing, since property rights are involved, and liberty of action, regulated; the only exception, where no notice and hearing is required, are cases involving the summary destruction of nuisances of trifling value (*See Lawton vs. Steele*, 152 U. S. 133).

One of the most important bodies created under the Commonwealth regime to carry out the 'social justice' policy embodied in our Constitution, is the Court of Industrial Relations (Commonwealth Act No. 103). This court has been described by our Supreme Court as "un tribunal especial con facultades judiciales" (*Pambusco Employees' Union vs. Court of Industrial Relations et al.*, G. R. No. 46727; *Ang Tibay et al. vs. Court of Industrial Relations et al.*, G. R. No. 46496, *opinión*

concurrente del Magistrado José P. Laurel). In the *Ang Tibay* case, it was pointed out that the Court of Industrial Relations is not narrowly constrained by technical rules of procedure, and the Act requires it to act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable. It shall not be restricted to the specific relief claimed or demands made by the parties to the industrial or agricultural dispute, but may include in the award, order or decision any matter or determination which may be deemed necessary or expedient for the purpose of settling the dispute or of preventing further industrial or agricultural disputes. The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.' In *Central Azucarera de Tarlac vs. Court of Industrial Relations*, G. R. No. 46843 it was held that the findings of the Court of Industrial Relations are conclusive and will not be disturbed in the absence of a showing that it has abused its discretion. From these rulings laid down, it may be seen, that it is hard to say exactly, just what the nature of the Court of Industrial Relations is. Suffice it to say, for the purposes of this article, that it partakes of the nature both an administrative tribunal (in its actuations in matters of procedure), and a court (since

it decides justiciable cases); and, we are constrained from discussing exhaustively, the nature and functions of the Court of Industrial Relations, for fear of trespassing into the unexplored vistas of administrative law.

It has been the purpose of this article to point out in a general way, the changes wrought by the introduction of the administrative process in the classical symmetry of the constitutional structure of our government. It may safely be said that the most important development in the field of law, of the present century, is the 'attempt to secure justice through administrative tribunals. According to Roscoe Pound, "it is manifest that the traditional American jealousy of administrative agencies has been forgotten and that there has come to be as strong a tendency to trust them as there was formerly to distrust them. (Roscoe Pound, *Public and Private Law, Cornell Law Quarterly, No. 4, Vol. XXIV pp. 469-482*).

Where all this will lead to, seems 'to terminate in a penumbra'; where we shall stop, can only be conjectured. But somewhere there must be an end. In closing, it would not be amiss, to quote an English writer: "Public law is gradually eating up private law. Industrial law is being controlled by administrative organs and is at the same time eating into the law of obligations. Quotas and marketing schemes under administrative control reduce the operation of commercial law. Housing and planning legislation takes the law of property under public control. This is only to say

that *laissez faire* has been abandoned, the public lawyer is ousting the private lawyer, and duties of institutions are superseding the ordinary rights and duties of private citizens." (*Jennings, The Institutional Theory, in Modern Theories of Law 68, 72*). And Roscoe Pound sounds a warning: "I am not preaching against administration, much less against an administrative law which is a true law, and not a calling of everything law that is done by a commission or board or bureau because it does it. I recognize the need of administration, and of a great deal of it, in the urban industrial society of today. It is needed as an administrative element in the judicial process. It is needed as a supplement to the judicial process. It is needed as a directing process in a society so organized economically and so unified economically that things must be done more speedily, with more adjustment to unique situations, with more coordination of special skill and technical acquirements than the judicial process. looking at controversies after the event, can afford. But to admit that development of the administrative process is necessary does not involve admitting that it should be free of checks such as a due balance between the general security and the individual life have led us to impose on both the legislative and the judicial processes. (Roscoe Pound, *Public and Private Law, supra*). For law, whether administrative or otherwise, is not only the definition but it is also the limitation of power.