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Lawyers Urge Judicial Curbs on Administrative Abuses

Joseph W. Henderson

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BY JOSEPH W. HENDERSON*

In taking office as president of your association last August, I said: "The time has now arrived when we must prepare with all our strength for the reforms needed to secure justice under law, before administrative tribunals, state and federal, and the enactment of necessary legislation to procure a fair and workable administrative procedure with the right therein of an impartial review before an established court of justice."

There have been sent to me many letters, as well as newspaper clippings, which appeal to the American Bar Association to take the lead for action against the "ruthless invasion of private rights" through regulations promulgated by certain administrative agencies. Perhaps some of those regulations and restrictions have been made necessary or advisable by the war emergency, but to free ourselves from them fully and promptly will call for courage and determination of the highest order.

The Illinois General Assembly Joint Legislative Commission has recently declared that:

> The American people look to the lawyers of our country to lead the battle to preserve our Constitution. They look to the American Bar Association to take the initiative to stop this program that is aimed at the destruction of our Bill of Rights.

I am a good deal concerned that we of the American Bar Association and the legal profession do the job which is expected of us, and do it soon and well. The rising tide of criticism of arbitrary administrative action no longer comes chiefly from lawyers or their clients. The groundswell of demand for protective action comes from the rank and file of folks, who now are finding out that arbitrary and unchecked administrative action affects their lives and liberties, too. As some one said the other day, they "are tired of being kicked around." If that is so, then those who are disregarding their rights and regimenting their lives are the uncontrolled bureaucrats in the administrative agencies.

We of the lawyers could not afford to ignore this rising tide of protest if we would. Masses of the people are looking to us to help them

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†Address to the members of the Law Society of Massachusetts, October 20, 1943. Reprinted by permission from the LAW SOCIETY JOURNAL.

*President, The American Bar Association.

regain their freedom from arbitrary administrative interference with other lives. The rank and file of people are our new allies in this task of curbing administrative abuses. It is a new and unprecedented opportunity for lawyers to be of expert service to a great many people, in organizing and leading a great fight against administrative absolutism. We would not, could not, let these folks down when they turn to us for guidance and help.

It appears that the head of the OPA on February 6, 1943, issued procedural regulation No. 4, governing procedure in the issuance of rationing suspension orders. In a case involving the Empire Packing Company of Chicago, where the company was being investigated for alleged violation of ceiling prices on wholesale sales of beef, the attorney for the OPA sought a court order to compel fifteen meat dealers to appear before the OPA examiner unrepresented by counsel and reporters of their own choosing, on the basis that proceedings before an OPA examiner were analogous to grand jury proceedings.

Judge John P. Barnes of the United States District Court denied the regional attorney's petition, stating:

> I am not going to compel the respondents to attend what might be called a star chamber session. I am going to order that the public be present, and that these hearings be held in a public place and that neither the respondents' attorneys nor a court stenographer be entitled to interrupt the proceedings.

At Peoria, Illinois, on September 10, 1943, a three-judge federal court passed upon the suit of *Roszell Dairy Company*, Peoria, and twenty-six associate milk companies, to restrain the OPA from enforcing a ruling that the company's plan of "better service awards" violated price ceilings. Judge Charles S. Briggle is quoted as saying:

> This is a culmination of a long series of acts depriving the courts of jurisdiction, vesting decisions instead in various boards throughout the country. The OPA act provides that no court, federal or state, shall have power to consider the validity of any regulation of the OPA or any price schedule and this court has no power to restrain the OPA. * * *
>
> The district court is subject to Congress. Congress can withdraw or give the court jurisdiction. In this case it has withdrawn our jurisdiction.
>
> To my mind the trend is bad. It is not in conformity with the traditions of America. * * *

Judge Atwell of Texas, a federal judge, recently ruled that the hearing administrators were unknown and unprovided for by the Constitution. He said:

> The hearing administrator presumes to conduct a court. He acts without fear of the consequence of his malfeasance or misfeasance. If he can suspend for two weeks he can suspend for two years. He is not only unknown to the Congress but he is unknown to the Constitution. What the hearing administrator thinks is beyond the reach of executive forgiveness. He himself is beyond the reach of any constitutional removing group. He is a modern instance of pure dictatorship.

The beloved chairman of the judiciary committee of the National House of Representatives, ex-Judge Hatton W. Sumners, in *Readers Digest* for September, 1943, warned that:

> One bureaucrat in the Securities and Exchange Commission said recently: "We *do* make the law. This order supersedes any laws opposed to it." Actually the bulk of what in effect are our general laws are now being made not by Congress but by bureaucracies.

There are those who favor such administrative absolutism and unchecked administrative action. They avow that the court of public opinion will correct any abuses of procedure or human rights.

There is an article on "Implied Regulatory Powers in Administrative Law" in *28 Iowa Law Review 576*. It was written by a graduate of law of the University of Frankfort, Germany, who is now a professor in an American university. A study of the article will show that he has Continental notions about the separation of powers, and considers that Congress is the only agency of the Government through which the sovereign will of the people actually expresses itself, and that Congress and administrative agencies have a superior position in our constitutional polity. This, of course, is the Continental doctrine, but emphatically is not our American doctrine of government according to law. He seems to think also that administrative officials have the power of construing acts of Congress, and that it is their business to make the interpretations for their own administrative purposes. This, of course, is or was the notion of French administrative law. Certainly it is not what has been understood as the law in this part of the world. We have many refugee professors of political science who are teaching a great deal of political science of Continental Europe in this country, as a sort of legal order of nature; and their teachings doubtless have a great deal to do with the spread of administrative absolutism among the faculties, and unfortunately among too many of the students, of colleges in this country.

Those who object to administrative absolutism, to arbitrary and unchecked administrative action upon the rights of individuals and

property without the legal restraints such as are imposed upon all other government activities, are not at all seeking to do away with administration and administrative agencies. Everyone must recognize that a great deal of administration and a great many administrative agencies have become necessary in the urban, industrial society of today, especially in wartime. But these agencies need not be left free to operate without the reasonable checks and safeguards by which legislative action, ordinary executive action, and even judicial action, are restrained.

Legislatures are required to proceed in such a way that there is ample opportunity for those whose rights are liable to be adversely affected to know what is proposed, and to present their case in hearings and through channels of public opinion to which lawmakers listen. Ordinary executive action may be challenged in the courts when sought to be carried into arbitrary effect against individuals, and threatened executive action in contravention of individual rights and causing and threatening irreparable damage to individuals may be challenged in equity. The oldest agencies of executive action are not protected by legislative limitation of judicial scrutiny of their action. But we are told that "the federal courts are entrusted with the correction of administrative errors for wrong-doing only to the extent of Congressional authorization." State legislation has often gone far in failing to authorize or even prohibit judicial scrutiny of administrative action contrary to fair play. There are checks even upon courts, which do not obtain, or in practice are ineffective, as to some of our most conspicuous administrative agencies.

In a court the judges from their very training and long professional tradition are impelled to conform their action to known standards, and to conform to settled ideals of impartial judicial conduct. Professional habit and training lead them generally to hear and weigh both sides of every point scrupulously and according to both the facts and the law. Rules of law which have entered into their everyday habits of action lead them to insist that everything upon which they are to base an order or judgment must be before them in such a way that no party to be affected can be cut off from full opportunity to explain or refute it or challenge its application to his case. Courts are impelled to seek authoritative factual and legal grounds of decision before acting, and to base their action upon reasoning from other grounds.

Secondly, the decision of a court is subject to criticism by a trained profession to whose opinion the judges as members of the profession are keenly sensitive.

Thirdly, each decision and the case on which it was based appear in full in public records. These records show what the claims of the respective parties were, what disputed questions of fact and law were before the tribunal, and how the questions of fact were determined.

Where causes are tried to a jury, the issues appear from the pleadings or very likely from questions put by the court and specifically answered by contending counsel, or in the instructions given by the trial judge. Where causes are tried by a judge, all this appears at least in the form of findings of fact and conclusions of law. It thus is apparent from the public records what conclusions the court came to as to the applicable law, either in the form of instructions to the jury or of findings by the court. The judgment of the court must respond to the pleadings, to the findings of fact, and to the conclusions of law, and any lack of consistency in these respects is apparent on the face of the record.

Fourthly, the judgment of a single judge on any matter finally affecting human rights or property is subject to review by a bench of judges, independent of the one whose action is to be scrutinized, and constrained by no hierarchial organization or esprit de corps to uphold whatever he does.

Fifthly, in the case of appellate courts all important decisions and the grounds on which they proceed and the reasons on which they proceed are published in the law reports. The opinions must be based upon the records in the cases decided, and these records are public and accessible to everyone. Thus the materials for criticism and accurate judgment with respect to judicial decisions are always available and readily accessible. Legal periodicals throughout the land comment upon the decisions of the courts on the assured basis of records and opinions.

On the other hand, those who sit in administrative determinations seldom have had experience in the function of impartial and trained fact-finding and decision. They are likely to have the layman's idea that decision is an easy task involving no acquired expertness through experience and habits of impartiality. They are likely to be conscientiously unconscious of what the lawyer soon learns; namely, that there are two sides to most cases. Without training in grounding their action upon certain known standards, they tend to act in deciding as if every case were unique. Likewise, the number of those who are trained and competent to appraise administrative determinations as distinguished from the general course of administrative action, if we leave lawyers out of account, is very limited. Those who might soundly evaluate such decisions are not necessarily members of a common profession with the administrative officials, and the latter are not unlikely to consider the criticism of others, including that of the lawyers, as negligible. Moreover, administrative determinations are not safeguarded by detailed and explicit records such as those which would keep down any tendency of a court to act otherwise than impartially and objectively, and which enable lawyer and layman alike to know accurately what has been done and why.

What lawyers seek is not to do away with modern administrative agencies but to insure that they operate according to law and the spirit of fair play, and with due regard for individual rights guaranteed by our constitutions, federal and state. Lawyers seek to ensure that the determinations of these agencies injuriously affecting individual rights be made and kept subject to effective scrutiny by impartial and law-governed courts.

It has been said by the advocates of administrative absolutism that the demand for effective checks upon administrative agencies is based on "a few sporadic cases" of arbitrary action, and that the experience of the administrators of these agencies will of itself correct such abuses as exist. But examination of the law reports throughout the English-speaking world shows abundantly that it is not a matter of occasional abuse of power. There are certain marked and persistent tendencies of administrative determination which come before the courts constantly and call for thorough-going judicial scrutiny and judicial enforcement of constitutionally guaranteed rights. An examination of some cases from the most recently published reports, federal and state, will suffice to make this point.

In the first place, there is a tendency in all administrative agencies to go beyond or outside of the statute creating them and defining their powers; to set up and give effect to policies beyond or even at variance with the statutes or the general law governing their action.

What the Chief Justice of the Supreme Court of the United States said in *Republic Steel v. National Labor Relations Board*, 311 U. S. 7 (1940), is very pertinent:

> We do not think that Congress intended to vest in the board virtually unlimited discretion to devise punitive measures and thus to prescribe penalties or fines which the board may think may effectuate the policies of the act.

In instances of this sort administrative agencies often claim sanction to develop the "policy of the statute." The courts have long had difficulty with this matter of determining and decreeing public policy.

Secondly, there is a tendency of administrative agencies to decide without adequate hearing, or without hearing one of the parties, or to decide first and "make the record" to support it later.

In *Federal Communications Commission* v. *National Broadcasting Co.*, Supreme Court of the United States, May 17, 1943, 319 U. S. 239, 63 Sup. Ct. 1035, the Government actually contended that where an order was made without a hearing against one entitled to a hearing, the latter could not appeal. This was properly rejected by the majority of the court. But the dissenting justices contended that to allow the appeal

"imposed a hampering restriction upon the functioning of the administrative process." This suggests the justice of the peace who refused to hear evidence on behalf of the defendants because he found it hampered him in arriving at a judgment for the plaintiff.

Thirdly, there is a tendency to decide on matters not before the agency, or on secret reports or evidence not produced at a hearing, such as acting on reports of investigations made by the board's employees and the like. This was specifically brought out in the Smith investigating committee of the NLRA by the House.

Such things are not confined to American administrative agencies. In the drift toward absolutism throughout the world, we find administrative agencies in other English-speaking lands concealing at times the real grounds of determination or misinforming the party proceeded against as to what it is that he has to meet.

The remarks of Gavin Duffy, J., in *Maunsell* v. *Minister for Education* [1940] I.R. 213, 234, are worth quoting:

> Never was the plaintiff told by or on behalf of the department that he had a case to meet on such and such evidence against him and that the department was to have his answer to that case if he had any to make before coming to a decision. The fact that all parties probably thought that the department had considerable discretion in the matter does not touch the issue here, which is simply whether or not the plaintiff has fair notice that an inquiry was to be held to determine his fate, fair notice of the case against him, and a fair opportunity to meet it. Upon that issue I must hold in the plaintiff's favor.

Fourthly, there is a tendency to make determinations contrary to the fair weight of the evidence and even without a basis in evidence of logical probative force. There are numerous decided cases in the reports upon this point.

Fifthly, there is a marked tendency to make an administrative proceeding one to give effect to a complaint, without differentiating between rule-making, investigation, prosecution, the advocate's function and the judge's function.

What was said by the circuit court of appeals for the fifth circuit in a recent case is noteworthy in this connection:

> On these facts the board, again as judge, making membership in the union, whose cause it had espoused as accuser, a guarantee against discharge, and again substituting its own ideas of plant discipline and subordination for those of the management, and upon no evidence whatever supporting it, found Dean's discharge discriminatory.

National Labor Relations Board v. Williamson-Dickie Mfg. Co., 130 F. (2d) 260, 267 (1942).

This case further is a good illustration of the characteristic of administrative action which is behind most of the things of which lawyers are complaining, namely, that such agencies in their zeal to bring about what they conceive to be the all important purpose of the particular subject confided to them ignore everything else.

In a line of cases going back to the seventeenth century, Courts have uniformly held that "one of the oldest and most salutary maxims of the law is that no man shall be judge in his own case."

Sixth, there is a tendency to make administrative rules exceeding the statutory authority.

In *Brown v. University of the State of New York*, 242 App. Div. 85 (1934), the court said: "Rule 8 is more restrictive than the statute. It transcends the standard fixed in the law and enacts a standard of its own."

One of the features of administrative justice which hinders effective review is want of finding of the facts upon which administrative orders and determinations are based. The Supreme Court of the United States long ago pointed out the necessity of findings of fact if there is to be an intelligent review and administrative agencies are to be held to conduct their determinations according to law.

> The requirement that courts, and commissions acting in a quasi-judicial capacity, shall make findings of fact, is a means provided by Congress for guaranteeing that cases shall be decided according to the evidence and the law, rather than arbitrarily or from extralegal considerations, and findings of fact serve the additional purpose, where provisions for review are made, of apprising the parties and the reviewing tribunals of the factual basis of the action of the court or commission, so that the parties and the reviewing tribunal may determine whether the case has been decided upon the evidence and the law, or, on the contrary, upon arbitrary or extralegal considerations. * * * The requirement of findings is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law. This is fully as important in respect of commissions as it is in respect of courts.

As stated by Stephens, J., in *Saginaw Broadcasting Co. v. Federal Communications Commission*, 96 F. (2d) 554, 559 (App. D.C. 1938).

It is noteworthy how persistently administrative agencies resist all attempt to hold their action to the limits of the law.

In *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S. 88, 91, 93 (1913), the Government insisted in the face of a prior decision of the Supreme Court of the United States that an order fixing rates was conclusive and could not be set aside even if based on no evidence. In *Ohio Bell Telephone Co. v. Public Utilities Commission*, 301 U. S. 292, 300 (1931), the commission sought to avoid the prior decisions of the court and claimed power to decide upon matters not brought to the notice of the party affected, basing its claim on extravagant assertions of a power of taking notice of the facts necessary to sustain its order. After emphatic pronouncement by the Supreme Court of the United States we find it later strenuously contended on behalf of an administrative agency that it can accept and make as its own "the findings which have been prepared by the active prosecutors for the Government after an *ex parte* discussion with them and without according any reasonable opportunity to the respondents in the proceeding to know the claims presented and to contest them." *Morgan v. United States*, 304 U. S. 1, 22 (1938).

In *Columbia System v. United States*, 316 U. S. 407 (1942), it was argued on behalf of the Federal Communications Commission that its rule injuriously affecting individual rights could not be challenged until steps were taken to enforce it against the plaintiff. As to this, Chief Justice Stone said:

> Most rules of conduct having the force of law are not self-executing but require judicial or administrative action to impose their sanctions with respect to particular individuals. Unlike an administrative order or a court judgment adjudicating the rights of individuals, which is binding only on the parties to the particular proceeding, a valid exercise of the rule-making power is addressed to and sets a standard of conduct for all to whom its terms apply. It operates as such in advance of the imposition of sanctions upon any particular individual. It is common experience that men conform their conduct to regulations by governmental authority so as to avoid the unpleasant legal consequences which failure to conform entails. And in this case, it is alleged without contradiction that numerous affiliated stations have conformed to the regulations to avoid loss of their licenses with consequent injury to the appellant.
>
> Such regulations have the force of law before their sanctions are invoked as well as after. When, as here, they are promulgated by order of the commission and the expected conformity to them causes injury cognizable by a court of equity, they are appropriately the subject of attack under the provisions of section 402 (a) and the Urgent Deficiencies Act.

Indeed, only the other day the Government sought to deny habeas corpus to challenge the arbitrary action of a selective service board in changing the classification of petitioner and to establish a rule that he must first submit to induction and then complain.

Ex parte *Stuart*, 47 F. Supp. 410, 414-15 (S.D. Cal. 1942).

A chief argument against effective judicial review is that it hampers efficient administration. We are told that it imposes legalism upon administrative agencies. What this means, of course, is that it compels them to operate according to the law constituting them and not according to their own notions of expediency for the time being. We are told that it is characteristic of administrative tribunals that simple and non-technical hearings take the place of trials, that a common-sense resort to usual and practical sources of information takes the place of archaic and technical rules of evidence, and that an informed and expert tribunal renders decisions which look forward to results rather than backward at precedents.

No one urges that an administrative hearing or investigation be conducted in all respects as a trial at law. No one today objects to any reasonable informality or application of common sense to the ascertainment of facts. What is objected to is the tendency to decide and act without fair hearing or without hearing both sides or upon secret investigations which retail gossip, self-serving declarations of interested parties, and pre-formed opinions and conjecture. In other words, what is objected to is the tendency to ignore what long experience has shown is fundamental in justice. To say that these elementary requirements of justice are technical "legalism" and that seeking to make available to all who are adversely affected the constitutional guarantee that a decision against them shall have a basis in evidence of rational probative force and not in prejudice, pre-formed opinions without hearing the other side, gossip, and made-to-order interviews under the name of investigation is insistence on "technical rules of evidence," is simply to say that all rights are to be at the mercy of administrative agencies. "Looking forward to results," if the tribunal considers itself informed without the hearing which the statute creating it requires, is a looking backward to the methods of the administrative tribunals of the Stuarts.

Requiring administrative agencies which exercise a power of adjudication to keep within the limits of their jurisdiction and powers as given by the statute creating them, requiring them to take the policies they apply from the statute under which they sit and not from their own ideas of particular social or political ends, requiring them to apply the standard provided by statute instead of making one of their own or acting on no standard, requiring them to find the facts upon which they

base their orders as all other tribunals are required to do—all this is not legalism, it is constitutionalism.

But it is said that judicial review has the effect of substituting the discretion of the court for that committed by law to the administrative agency. There might have been some warrant for this contention when back-handed review of administrative action by injunctions and suits analogous to bills of peace was the only available remedy. Unfortunately in some jurisdictions and under some statutes those expensive and dilatory proceedings are still the only available mode of ensuring due process of law. But the remedy is not to turn administrative agencies at large to fix their own powers, proceed in disregard of constitutional guarantees and make their own law for themselves. It is rather to require records and provide a mode of reviewing them which will reach the tendencies of such tribunals requiring checks without interfering with their legitimate discretion. It is important to notice the curious insistence of the advocates of administrative absolutism on retaining review by suit in equity, which is open to the objections which they make to judicial review. The reason is that this remedy is so costly and time-consuming that it is practically available only to the most wealthy litigants where large amounts are in controversy. In other words, they call for retaining this mode of review because in practice it operates to prevent effective review in the great majority of cases.

Some have argued that the great variety of administrative agencies and the subjects committed to them require a great variety in the modes of review and consequent revision of the chaotic procedural situation which obtains so generally. But there is no variety in the characteristics of administrative determination which call for the safeguard of effective judicial review. Formerly we had separate modes of review for each different type of court or jurisdiction. We have learned that the great variety of subjects which come before the courts does not require variety in appellate procedure. A simple uniform mode of appeal for all cases has become general throughout the English speaking world. This experience is a sufficient refutation of the argument for retaining divers modes of review for different administrative proceedings.

As things are today, procedure to review administrative determinations takes on many forms. It has grown up haphazard by statutory additions to and judicial development of certain common law and equitable remedies. Statutes have made every sort of provision for review as to particular administrative agencies, prescribing appeal or certiorari or prohibition or suit in equity with no system, choosing one form for this statutory agency and another for that with little attempt at uniformity. Indeed, statutes have often sought more to cut off judicial review or greatly restrict it than they have to make it effective within the range of the constitutional guarantees which it requires.

Dean Stason has put the matter well saying that the statutory remedies are "part of a statutory chaos, a heterogenous confusion of ill-conceived and badly drafted provisions grown more or less like Topsy and badly needing scientific attention." The state reports are full of cases of doubt how to proceed. In some states the distinctions are still so technical that resort to the available remedies is discouraged. In the result, constitutional protections against arbitrary invasion of individual rights are made nugatory with respect to the most important individual business and practical activities.

Legislation is abundantly needed to correct this situation both with respect to federal administrative agencies and in most of the states. Four points should be insisted upon:

(1) That both sides and all persons to be injuriously affected must be heard fully, on due notice, before orders and determinations are made against them.

(2) That nothing which is to be used as the basis of an administrative determination adverse to a party's interest be withheld from his scrutiny so as to deprive him of full opportunity to explain or refute it, and nothing to be used in arriving at the determination is to be withheld from the record for review.

(3) That whenever determinations are made injuriously affecting individual interests, specific findings of fact be required, and a record showing fully and clearly on what evidence the findings are based, so as to make review possible and effective and to ensure that the findings have a basis in evidence of rational probative force.

(4) That a simple procedure be provided by which orders and determinations may be reviewed to determine whether there has been a full and fair hearing of all sides, whether the facts in dispute necessary to the decision have been found, whether the order or determination is in accord with the statute governing it, rightly interpreted and applied, and whether the administrative agency has applied according to law the standard committed to it by statute or has applied a different one, perhaps of its own making, or has acted upon no standard.

We as an association desire to assist the lawyer in conditioning himself both technically and temperamentally to the practice of administrative law. Lawyers who adjust themselves to the present-day legal world, which is now and in the future is going to be very largely administrative, are going to do very well. On the other hand, the lawyer who insists upon shutting his eyes to developments in this field and looks to the courts as his only forum of practice may not be going to do so well.

It is our No. 1 job in this field to see that we have proper tribunals with due process, because administrative regulation now reaches more people than ever before, its demands are more exacting, and in many

respects it outweighs in volume and intensity the functions of other instrumentalities of justice, such as the courts and even more profoundly affects both the substance of human rights and the bases and extent of public confidence in the American system of justice and law.

We have in preparation a strong and comprehensive, but effective administrative law bill, which will deal with the subject in a thoroughgoing, remedial way. We should next set up methods by which the bill may be publicized, and its detailed proposals called to the attention of legislative committees as and when specific legislation involving administrative powers and procedure comes before them.

We shall strongly urge the judiciary committees of both Houses of Congress to undertake the codification of administrative procedure provisions, in the various statutes relating to the many administrative agencies. The necessary Congressional groups themselves need to be interested actively in this great problem, to the end that proper legislation may be enacted.

This vigorous program will need to be expertly and adequately handled. This association has an exceptional committee which has undertaken the task. It is vital to us all, and no group is more available or fitted than the lawyers of the bar associations to take an informed stand as various proposals arise, to see that the necessary safeguards are included and that the public is properly informed.

Government by bureaucracy is arbitrary, and ultimately there could be no place for lawyers or courts in it. As bureaucracy grows, in direct ratio the legal profession and the judicial function is destroyed. The public needs the independence and expertness of the legal profession, and needs the impartiality and the trained judgment of the courts. We of the bar have a job before us, and united we can do it.

American Bar Association Resolution on Constitutional Principles for World Order

Proposed by the Section of International and Comparative Law and adopted by the House of Delegates
February 29, 1944

Whereas, the American Bar Association, by a resolution of its House of Delegates, adopted August 27, 1942, affirmed "its devotion to and its faith in the existence, permanency and the validity of international law and the law of nations as the fundamental basis for regulating international relations"; and

Whereas, by a resolution of the House of Delegates, adopted March 30, 1943, the Association endorsed, "as one of the primary war and peace objectives of the United Nations, agreement among such nations for the complete establishment and maintenance at the earliest possible moment of an effective international order among all nations based on law and the orderly administration of justice"; and

Whereas, on September 21, 1943, the House of Representatives of the United States adopted a resolution expressing itself as "favoring the creation of appropriate international machinery with power adequate to establish and to maintain a just and lasting peace among the nations of the world," and as "favoring participation by the United States therein through its Constitutional processes"; and

Whereas, on November 5, 1943, the United States Senate adopted a resolution providing:

> That the United States, acting through its constitutional processes, join with free and sovereign nations in establishment and maintenance of international authority with power to prevent aggression and to preserve the peace of the world. That the Senate recognize the necessity of there being established at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.

Now, Therefore, It Is Hereby Resolved:

1. That the American Bar Association reaffirms its adherence to the principles set forth in its aforesaid resolutions of August 27, 1942, and March 30, 1943; records its hearty support of the aforesaid resolutions of the House of Representatives and the Senate of the United States; and urges all members of the American Bar Association to avail themselves of every opportunity to cooperate with the legislative and executive branches of our government in measures for the prompt and effective implementation of these resolutions.

2. That copies of this resolution be sent to the President of the United States, the Senate, the House of Representatives, the Secretary of State, and to all Bar Associations affiliated with the American Bar Association.

HARRY S. KNIGHT, Secretary.