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Whenever existing legal institutions fail to take care adequately of socially important interests, it is inevitable that new instrumentalities and fresh procedures will be demanded and will arise. The luxuriant fluorescence of administrative tribunals during the last half century, here and in the British Empire alike, roots in a rich soil, the product of mouldering claims which perished because they could find neither shelter nor sustenance[1] within the fields belonging to "our lady the Common Law."[2]

There is no novelty in drawing a comparison between this phenomenon of our age and the rise of new tribunals in Tudor and Stuart England. The likeness, in cause and in effect, has been remarked by acutely incisive observers.[3] As in that era, so today we have with us the problem of the relation between the old tribunals and the new in the legal order. In that earlier time, after much turmoil and struggle,[4] the Court of Chancery and its justice achieved acceptance as integral parts of the legal order. Today it is commonplace to find the two bodies of principle administered by the same tribunal. Other agencies, less fortunate, partly because they served too zealously the losing party in the political strife between the adherents of Parliament and the Royalists,[5] partly because of arbitrary and oppressive exercise of their power,[6] were extirpated, and the places thereof knew them no more. Yet the verdict of history attests that they rendered efficient and useful service.[7] Reform might have involved less social waste than abolition.

The acrimony of the contest between the common law courts and the other tribunals was heightened by the misfortune of jealousy, per-

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[1]*See* Pound, *Justice According to Law*, 14 COL. L. REV. 1, 21 (1914); Frankfurter, *The Task of Administrative Law*, 75 U. PA. L. REV. 614, 617 (1927); Metzler, *The Growth and Development of Administrative Law*, 19 MARQ. L. REV. 209 (1935).

[2]The personification is Sir Frederick Pollock's in *The Genius of the Common Law, I*, 12 COL. L. REV. 189, 190 (1912).

[3]*See* Pound, *Justice According to Law*, 14 COL. L. REV. 1, 19 (1914); Willis, *Three Approaches to Administrative Law*, 1 U. TOR. L. J. 53 (1935).

[4]*See* 1 HOLDSWORTH, HISTORY OF ENGLISH LAW, 459-465 (3d ed. 1922).

[5]*See* 1 HOLDSWORTH, *op. cit.* supra note 4, 479.

[6]*See* 1 HOLDSWORTH, *op. cit.* supra note 4, 500, 514.

[7]*See* 1 HOLDSWORTH, *op. cit.* supra note 4, 507.

sonal[8] and professional.[9] Surely it is a good omen that the bar today is so studiously pondering the problem of fitting the administrative agencies into the general system of dispensing justice rather than engaging in sanguinary and ill-advised battles against them. There is reason to hope that in our time we may effect a proper reception into the legal order of these useful tribunals and the interests they serve, rather than hinder or defeat the one by destroying the other.[10] In the light of this hope, we may approach that aspect of the problem of the adjustment between administration and the legal order involved in the extent to which decisions of administrative bodies should be reviewable by the courts.

Since our problem is stated in terms of oughtness, we are free to look to considerations of policy and expediency. Constitutional law, itself, may be re-examined, for, since *Erie Railroad Company v. Tompkins*,[11] we recognize that even centenarian error remains subject to correction, and, if it proves impossible to convince the judges that they have misread the Constitution, there endures the amending process with which to bring in any changes that we may find desirable. Indued with this freedom of investigation, let us consider the relationship of commissions and courts in the light of the purposes which the former are to serve and of the ends we seek to accomplish by imposing judicial review upon them.

The advantages which have been claimed for the administrative tribunals are: (1) legislative relief from detailed specification;[12] (2) facility of adjustment in rule-making;[13] (3) expert judgment, deriving from specialization[14] and from accumulated experience;[15] (4) celerity and dispatch in action,[16] contrasted with the cumbersome traditional procedure of the courts;[17] (5) freedom from the technicalities of the common law rules of evidence;[18] (6) the administrator's power of initiating action[19] and acquiring information by independent investigation,[20]

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[8]*See* Pollock, *The Genius of the Common Law, V*, 12 COL. L. REV. 577, 582 (1912).

[9]*See* 1 HOLDSWORTH, HISTORY OF ENGLISH LAW, 414, 459, 486, 508 (3d ed. 1922).

[10]*Cf.* O'Reilly, *Administrative Absolutism*, 7 FORD. L. REV. 310 (1938).

[11]304 U. S. 64, 82 L. ed. 1188, 58 S. Ct. 817, 114 A. L. R. 1487 (1938).

[12]United States v. Grimaud, 220 U. S. 506, 55 L. ed. 563, 31 S. Ct. 480 (1911).

[13]*See* ROBSON, JUSTICE AND ADMINISTRATIVE LAW, 274 (1928); Rosenberry, *The Supremacy of the Law; Law vs. Discretion*, 23 MARQ. L. REV. 1, 6 (1938).

[14]*See* ROBSON, JUSTICE AND ADMINISTRATIVE LAW, 267 (1928); LANDIS, THE ADMINISTRATIVE PROCESS, 23 (1938).

[15]*See* ROBSON, JUSTICE AND ADMINISTRATIVE LAW, 273 (1928); *cf.* Pitney, J., in Darnell v. Edwards, 244 U. S. 564, 61 L. ed. 1321, 37 S. Ct. 701, P. U. R. 1917F, 64 (1917).

[16]*See* ROBSON, JUSTICE AND ADMINISTRATIVE LAW, 264 (1928); Rosenberry, *The Supremacy of the Law: Law vs. Discretion*, 23 MARQ. L. REV. 1, 6 (1938).

[17]*See* Pound, *Justice According to Law*, 14 COL. L. REV. 1, 21 (1914).

[18]*See* WIGMORE, EVIDENCE, §4b (3d ed. 1940).

[19]*See* LANDIS, THE ADMINISTRATIVE PROCESS, 34 (1938). *Cf.* Pacific Employers' Ins. Co. v. Pillsbury, 14 F. Supp. 156 (N. D. Calif. 1936).

[20]*See* LANDIS, THE ADMINISTRATIVE PROCESS, 37 (1938).

compared with the judge's dependence upon litigants and their counsel; (7) cheapness to the parties;[21] (8) expedition in ascertaining the rules applicable to one's conduct;[22] (9) opportunity for individualization in the application of social rules;[23] and (10) placing the enforcement of a desired policy in the hands of officials believed to be more sympathetic therewith and better fitted for its administration than judges.[24] The ends to be achieved by judicial review of administrative action may be summarized as: (1) enforcement of constitutional limitations;[25] (2) restriction of the administrative to the bounds of its appointed jurisdiction;[26] (3) the maintenance of procedural decencies;[27] (4) the prevention of prejudiced or arbitrary action;[28] (5) the avoidance of judgment "influenced by extraneous considerations";[29] (6) the incitation of the administrative to higher standards of adjudication;[30] and (7), perhaps, the correction of erroneous administrative judgment.[31] These are the aims which have presented themselves to various thinkers as worthy objectives. How may we so mould our judicial review of administrative action as to achieve the fullest possible realization of these ends? To what extent must we limit or forego some of them, in order to safeguard others which seem more important? I propose to discuss these questions, first, with relation to judicial oversight of administrative procedure; second, in respect to the review of the substance of administrative action; and, finally, with regard to certain problems of technique in the exercise of judicial review.

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[21] *See* ROBSON, JUSTICE AND ADMINISTRATIVE LAW, 263 (1928).

[22] "One of the chief reasons for setting up administrative agencies in so many connections is to further expedition in the determination of individual rights instead of leaving the individual to guess as to what he may do safely and judge his action after the event." *Report of Special Committee on Administrative Law, Advance Program*, 61st Annual Meeting, American Bar Assn., 134, 138 (1938).

[23] *See* Pound, *Individualization of Justice*, 7 FORD. L. REV. 153, 163 (1938); Lavery, *The "Findability" of the Law*, 27 J. AM. JUD. SOC., 25 (1943).

[24] *See* ROBSON, JUSTICE AND ADMINISTRATIVE LAW. 275 (1928); LANDIS, THE ADMINISTRATIVE PROCESS, 32 (1938); Rosenberry, *The Supremacy of the Law: Law vs. Discretion*, 23 MARQ. L. REV. 1, 7 (1938); Vanderbilt, *The Place of the Administrative Tribunal in Our Legal System*, 24 A. B. A. J. 267, 269, 12 U. CIN. L. REV. 118, 128 (1938).

[25] St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 80 L. ed. 1033, 56 S. Ct. 720 (1936).

[26] *See* ROBSON, JUSTICE AND ADMINISTRATIVE LAW, 236 (1927).

[27] Ohio Bell Tel. Co. v. Public Utilities Commission, 301 U. S. 292, 81 L. ed. 1093, 57 S. Ct. 724 (1937).

[28] *See* Frankfurter, *The Task of Administrative Law*, 75 U. PA. L. REV. 614, 618 (1927); ROBSON, JUSTICE AND ADMINISTRATIVE LAW, 236 (1928).

[29] *See* ROBSON, JUSTICE AND ADMINISTRATIVE LAW, 236 (1928).

[30] *See* HEWART, THE NEW DESPOTISM, 156 (1929); ALLEN, BUREAUCRACY TRIUMPHANT, 7 (1931).

[31] "I cannot see why the findings of fact of a trained equity or admiralty judge should be subject to complete review, and the findings of fact of the Commissioner, who is often without legal training, in cases far more complicated than ordinary equity or admiralty suits, are subject to a far less rigid review." Vanderbilt, *The Bar and the Public*, 62 A. B. A. REP., 464, 470 (1937).

JUDICIAL REVIEW AS TO PROCEDURE

First, as to procedure, there will be, I take it, little dissent from the proposition that this presents one of the most appropriate fields for wise and effective judicial guidance of administrative behavior. Not only do our constitutional guaranties of due process of law speak alike to the learned and the unlearned with especial emphasis upon decent standards of behavior in the conduct of governmental activity; it is to be remembered, also, that the courts have back of them centuries of experience in the adjustment of disputes among men and in the problem of assuring to the participants in these disputes a fair and adequate opportunity to present their respective contentions. The administrative agencies, relatively new in the field, have no similar traditions and experience behind them. They have burgeoned with such rapidity that they have had little time to consider procedural niceties *a priori*, particularly since they are sent out, each with an urgent legislative command to enforce some vital policy. The development of methods of practice, equable as well as efficient, and of an *esprit de corps*, jealously guarding a high repute for just administration, must be the work of years,[32] as the experience of judicial agencies attests.[33] Special circumstances surrounding many of our administrative tribunals tend to retard this evolution.[34] Hence, while we realize fully that "The Constitution of the United States is not a code of civil practice,"[35] we may feel assured that application of "the rudiments of fair play"[36] in commission procedure may be fostered materially through the assistance afforded by a wisely administered judicial supervision.

Examples of the appropriate exercise of this supervision abound in many fields. It is of high importance that in the assessment of taxes according to valuation,[37] in public utility regulation,[38] in licensing pro-

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[32]A sympathetic, as well as able, observer of the first of our great federal commissions speaks of improvements in practice "springing from administrative experience." *See* 4 SHARFMAN, THE INTERSTATE COMMERCE COMMISSION, 163 (1937).

[33]Note, for example, the poor state of judicial justice in medieval England, Riddell, *Erring Judges of the Thirteenth Century*, 24 MICH. L. REV. 329 (1926); Vance, *Law in Action in Medieval England*, 17 VA. L. REV. 1 (1930); the low standard of ethics in the chancery which could lead the bribe-taking Bacon to assert that he was better than his predecessors, Huycke, *Francis Bacon*, 9 CAN. B. REV. 625, 629 (1926); 5 HOLDSWORTH, HISTORY OF ENGLISH LAW, 244-245 (1924); the corruption and subservience of the Restoration courts, 6 *Ibid.*, 503-513 (1924).

[34]*See Report of Special Committee on Administrative Law*, 61 A. B. A. REP., 720, 736-739 (1938).

[35]Cardozo, J., dissenting in Panama Ref. Co. v. Ryan, 293 U. S. 388, 79 L. ed. 446, 55 S. Ct. 241 (1935).

[36]Per Holmes, J., in Chicago, M. & St. P. Ry. v. Polt, 232 U. S. 165, 58 L. ed. 554, 34 S. Ct. 301 (1914).

[37]Central of Georgia Ry. v. Wright, 207 U. S. 127, 52 L. ed. 134, 28 S. Ct. 47 (1907).

[38]Chicago, M. & St. P. Ry. v. Minnesota, 134 U. S. 418, 33 L. ed. 970, 10 S. Ct. 462, 702 (1890).

ceedings,[39] in the exclusion[40] or the deportation of aliens,[41] and in the myriads of other administrative determinations affecting private interest,[42] it should be the established rule that the person affected "shall have the right to support his allegations by argument, however brief; and, if need be, by proof, however informal";[43] that is, the right to a hearing upon appropriate notice. By these requirements, the public's interest in the maintenance of procedural decency and in the prevention of capricious action is promoted, the likelihood of judgment based upon irrelevant factors is reduced, and the administrative tribunal is put upon its mettle to produce a proper decree. Expert judgment is informed and aided by hearing. Wise individualization of rules is advanced by it. So long as the character of the notice required[44] and the nature of the hearing[45] are adjusted to the type of the proceeding, there need be no undue burden upon the celerity or the efficiency of the administrative process. Those particular emergencies calling for immediate action may be provided for, as they have been, by dispensing with the necessity for hearing in advance of action,[46] if adequate process for a later presentation of the individual interests affected is provided.[47]

There has been some tendency to make the distinction that delegated legislative action may be taken without hearing because the legislature itself thus could act.[48] But the press of many tasks upon the legislators and the limited time at their disposal make impossible the more thorough process which the administrative bodies are equipped to afford. The true distinction which should be made in this respect is that suggested by Professor Fuchs, namely, to differentiate the "function of laying down general regulations" from that of "taking * * * action

[39]Goldsmith v. United States Board of Tax Appeals, 270 U. S. 117, 70 L. ed. 494, 46 S. Ct. 215 (1925) (refusal); Hanson v. Michigan State Bd. of Registration, 253 Mich. 601, 236 N. W. 225 (1931) (revocation).

[40]Chin Low v. U. S., 208 U. S. 8, 52 L. ed. 369, 28 S. Ct. 201 (1908).

[41]The Japanese Immigrant Case, 189 U. S. 86, 47 L. ed. 721, 23 S. Ct. 611 (1903).

[42]Southern Ry. v. Virginia, 290 U. S. 190, 78 L. ed. 260, 54 S. Ct. 148 (1933) (order to install grade crossing).

[43]Per Moody, J., in Londoner v. City and County of Denver, 210 U. S. 373, 52 L. ed. 1103, 28 S. Ct. 708 (1908).

[44]Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U. S. 441, 60 L. ed. 372, 36 S. Ct. 141 (1915) (general notification by statute sufficient in board of equalization); San Diego Land & Town Co. v. National City, 174 U. S. 739, 43 L. ed. 1154, 19 S. Ct. 804 (1899) (same as to rate-making).

[45]Norwegian Nitrogen Prod. Co. v. United States, 288 U. S. 294, 77 L. ed. 796, 53 S. Ct. 350 (1933) (hearing before tariff commission may conform to legislative practice). And *see* Fuchs, *Procedure in Administrative Rule-Making*, 52 HARV. L. REV. 259 (1938).

[46]North American Cold Stor. Co. v. Chicago, 211 U. S. 306, 53 L. ed. 195, 29 S. Ct. 101 (1908).

[47]Lawton v. Steele, 152 U. S. 133, 38 L. ed. 385, 14 S. Ct. 499 (1893); Miller v. Horton, 152 Mass. 540, 26 N. E. 100 (1891); Peo. v. Board of Health, 140 N. Y. 1, 35 N. E. 320 (1893).

[48]Com. v. Sisson, 189 Mass. 247, 75 N. E. 619 (1905); Randall Gas Co. v. Star Glass Co., 78 W. Va. 252, 88 S. E. 840 (1916).

applying to named or specified persons or situations."[49] In respect to action of the first type, many factors combine to render insistence upon an antecedent hearing as useless for the effective protection of vital interests as it is impractical.[50] The persons to be affected by the contemplated order are numerous; often they are widely dispersed. By hypothesis, the regulations touch the public interest, and that interest ought not to brook the delay which would be apt to arise from notification of the proposed order to so large a group and from affording full hearing to all who might apply.[51] Adequate protection to the individual can be extended when enforcement is sought against him.[52] Hence it is quite proper that the courts should concede, as they do,[53] that the exercise of this rule-making power may proceed without advance notice and opportunity to be heard. On the other hand, where the action, even though it may eventuate in an order "legislative" in character according to the well-known test approved by the Supreme Court of the United States in *Prentis v. Atlantic Coast Line Company*,[54] is projected against one or a few specifically designated respondents, the modern tendency is to insist that administrative bodies should extend to them the more civilized procedure, involving notice and hearing, which is made possible by their form of organization and their resources of time and of personnel.[55] Such procedure is calculated to save time, money and effort for all concerned, and I think we shall do well to approve the current trend toward insistence thereon. If there is any room for continued resort to the supposed rule that administrative action of specific application can be taken without notice and hearing simply because a legislature could have done the same thing in that way, it is only with relation to tribunals which in fact possess broad legislative or rule-making power and in respect to action which they might have taken in that capacity.[56]

Of course, the notice and hearing requirement must be administered in a statesmanlike manner. While statutory commands as to the character of the notice must be enforced,[57] in the absence of legislative provision there should be no attempt, as of constitutional right or by im-

[49] *See* Fuchs, *Administrative Rule-Making*, 52 HARV. L. REV. 259, 265 (1938).

[50] Spokane Hotel Co. v. Younger, 113 Wash. 359, 194 P. 595 (1920).

[51] State v. Newark Milk Co., 118 N. J. Eq. 504, 179 A. 116 (Err. & A. 1935).

[52] Train v. Boston Disinfecting Co., 144 Mass. 523, 11 N. E. 929, 59 Am. Rep. 113 (1887). *See also* HART, INTRODUCTION TO ADMINISTRATIVE LAW, 276 (1940).

[53] Bartlett-Frazier Co. v. Hyde, 65 F. (2d) 350 (C. C. A. 7th, 1933); State v. Newark Milk Co., 118 N. J. Eq. 504, 179 A. 116 (Err. & A. 1935); H. F. Wilcox Oil & Gas Co. v. State, 162 Okla. 89, 19 P. (2d) 347, 86 A. L. R. 421 (1933) (dictum); Greer v. Railroad Comm., 117 S. W. (2d) 142 (Tex. Civ. A., 1938); Spokane Hotel Co. v. Younger, 113 Wash. 359, 194 P. 595 (1920).

[54] 211 U. S. 210, 53 L. ed. 150, 29 S. Ct. 67 (1908).

[55] Southern Ry. v. Virginia, 290 U. S. 190, 78 L. ed. 260, 54 S. Ct. 148 (1933). Some courts, unwisely, it is believed, even apply the requirement to rule-making. McGrew v. Industrial Com., 96 Utah 203, 85 P. (2d) 608 (1938).

[56] Burgess v. Brockton, 235 Mass. 95, 126 N. E. 456 (1920).

[57] Alderman v. Town of West Haven, 124 Conn. 391, 200 A. 330 (1938).

plication out of statutory generalities, to require notification of a type which would impose an undue burden upon the administrative process, as, for example, a monition to each individual patron in rate proceedings.[58] In appropriate cases, such devices as notice to the proper representatives of a numerous class should be permitted.[59]

The requirement of a hearing upon notice brings us but to the threshold of appropriate judicial supervision over the administrative process. If the exaction of a hearing is to mean anything, oversight must extend to the point of ascertaining that the hearing affords an effective forum for the presentation of one's case rather than a sterile formality. By notice or in some other manner, the parties should be informed of the nature of the action to be taken[60] and the issues involved.[61] Otherwise, "the fundamentals of a fair hearing" are denied.[62] But control in this field must be exercised with the highest degree of wisdom, since it touches closely upon the administrative advantages of informality, celerity, and freedom from the technical formalities of legal procedure. Hence, the courts must watch carefully lest their defense of the individual's right to apprisal of the issues lapse into captious and useless imposition of their own ideas of good form upon the administrative tribunal. If by the terms of the notice, however unconventional,[63] or by evolution through a protracted hearing with full opportunity for the presentation of rebuttal[64] and clarification of the issues by argument,[65] or by any other method, the persons subjected to the administrative jurisdiction actually are informed of the matters they are to meet and are afforded a fair chance to make their representations effectively, there should be no judicial insistence upon any special formality.

Another aspect of procedure in which judicial intervention frequently is invoked concerns personnel. The court's refusal, in the absence of statutory direction, to condemn the delegation of hearing in the

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[58]Southern Oil Corp. v. Yale Nat. Gas Co., 89 Okla. 121, 214 P. 131 (1923).

[59]Chamber of Commerce of Minneapolis v. Federal Trade Com., 13 F. (2d) 673 (C. C. A. 8th, 1926).

[60]Carl Zeiss, Inc. v. United States, 76 F. (2d) 412 (Ct. of Cust. & Pat. App. 1935); Pioneer Tel. & Tel. Co. v. State, 38 Okla. 412, 133 P. 476 (1913).

[61]West Ohio Gas Co. v. Public Utilities Commission (No. 1), 294 U. S. 63, 79 L. ed. 761, 55 S. Ct. 316 (1935).

[62]West Ohio Gas Co. v. Public Utilities Commission (No. 1), *supra* note 61; Morgan v. United States, 304 U. S. 1, 83 L. ed. 1129, 58 S. Ct. 773 (1938).

[63]*In re* Van Hyning, 257 Mich. 146, 241 N. W. 207 (1932).

[64]National Labor Relations Board v. Remington Rand, Inc., 94 F. (2d) 862 (C. C. A. 2d, 1938), [cert. den. 304 U. S. 576, 82 L. ed. 1540, 58 S. Ct. 1046 (1938), 304 U. S. 585, 82 L. ed. 1546, 58 S. Ct. 1061 (1938). reh. den. 304 U. S. 590, 82 L. ed. 1549, 58 S. Ct. 1054 (1938)].

[65]National Labor Relations Board v. Mackay Radio & Tel. Co., 304 U. S. 333, 82 L. ed. 1381, 58 S. Ct. 904 (1938).

first instance to single members of the tribunal[66] or to trial examiners,[67] or to demand a continuity of membership between the time of hearing and the time of decision,[68] seems eminently proper. Those considerations of celerity, economy, and facility of adjustment which we have seen bulk so large in the argument for the administrative process are greatly advanced by this way of proceeding. A determination made upon a perusal of the written record in no way prevents the parties from presenting fully their case nor does it make more difficult the task of judicial review. Only the argument that better judgment results from personal observation of the witnesses may be brought against it. When we recall that the other great legal system of the world sets no such store upon testimony *viva voce*,[69] and that the equity practice for a long time rejected it,[70] we may feel a proper reluctance to insist that our new tribunals be compelled to rely upon it.

The problem of prejudice appears to afford an opportunity for the exercise of valuable judicial supervision extending farther than is commonly practiced. Hypertechnical charges of unfairness, such as the bias alleged to rise from the desire to establish a reputation for efficiency[71] or the faithful enforcement of policy,[72] should not be made a basis for judicial review, for obvious reasons. On the other hand, participation by a commissioner given to favoritism,[73] or by one whose activities in the preliminary transactions show forth prejudice in its original sense of pre-judgment,[74] properly are recognized as vitiating the administrative decree. The generally received exception to this rule, where the exclusion of the prejudiced member would destroy the tribunal,[75] is of

[66]Davidson v. Commissioner of Internal Revenue, 91 F. (2d) 516 (C. C. A. 5th, 1937). But *cf.* Bandini Estate Co. v. Los Angeles County, 28 Calif. A. (2d) 224, 82 P. (2d) 185 (1938).

[67]National Labor Relations Board v. Mackay Radio & Tel. Co., 304 U. S. 333, 82 L. ed. 1381, 58 S. Ct. 904 (1938).

[68]United States v. Reiner, 83 F. (2d) 166 (C. C. A. 2d, 1936); Visceglia v. United States, 24 F. Supp. 355 (S. D. N. Y. 1938). *Cf.* Hewitt's Appeal, 76 Conn. 685, 58 A. 231 (1904).

[69]*See* Le Paulle, *A Study in Comparative Civil Law*, 12 CORN. L. Q. 24, 32 (1926).

[70]*See* 9 HOLDSWORTH, HISTORY OF ENGLISH LAW, 353 (1926); 5 WIGMORE, EVIDENCE, 199 (3d ed. 1940); 1 WHITEHOUSE, EQUITY PRACTICE, 568 (1915).

[71]Duff v. Osage County, 180 Okla. 387, 70 P. (2d) 79 (1937).

[72]Georgia Continental Tel. Co. v. Public Service Commission, 8 F. Supp. 434, 6 P. U. R. (N. S.) 359 (N. D. Ga. 1934); Montana Pow. Co. v. Public Service Commission, 12 F. Supp. 946, 12 P. U. R. (N. S.) 511 (D. Mont. 1935).

[73]United States v. Redfern, 180 F. 500 (C. C. La. 1910); Narragansett Racing Assn. v. Kiernan, 59 R. I. 90, 194 A. 692 (1937).

[74]United States v. Reynolds, 2 F. Supp. 290 (N. D. Ind. 1932).

[75]Brinkley v. Hassig, 83 F. (2d) 351 (C. C. A. 10th, 1936); Georgia Continental Tel. Co. v. Public Service Commission, 8 F. Supp. 434, 6 P. U. R. (N. S.) 359 (N. D. Ga. 1934). Hence board members may not be questioned to show their prejudice. *In re* Reno, 57 Nev. 314, 64 P. (2d) 1036 (1937). *See also* United States v. Morgan, 313 U. S. 409, 85 L. ed. 1429, 61 S. Ct. 999 (1941).

questionable expedience. In view of the high chance of arbitrary infringement of individual interests in such a case, it seems that there is no undue hampering of administrative efficiency in holding that due process is violated if the legislature makes no provision for disqualification and substitution.[76]

Once more, though, it is necessary to sound a note of caution. It is essential to draw the line between personal prejudice and an opinion as to proper policy held by the member of a tribunal, such as a board of medical examiners, instructed by the legislature to implement and enforce a standard. In such a one, strong conviction, at least of a reasonable nature, concerning what the social interest demands, ought not to be adjudged a disqualification.[77]

(Concluded in September Issue)

[76]State v. Aldridge, 212 Ala. 660, 103 S. 835 (1925); Abrams v. Jones, 35 Ida. 532, 207 P. 724 (1922).

[77]Brinkley v. Hassig, 83 F. (2d) 351 (C. C. A. 10th, 1936).

HAVE YOU PAID YOUR DUES?