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PRIVATE RIGHTS AND ADMINISTRATIVE DISCRETION.*

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In order to obtain an adequate understanding of the private rights of individuals on the one hand and of the extent of administrative discretion on the other hand, it is necessary to examine in some detail both the methods of administrative action and the judicial remedies which are open to the individual claiming himself aggrieved by that action.

Administrative methods and judicial remedies will on such an examination be found to be much less dependent on constitutional limitations than is perhaps ordinarily supposed. These limitations are, as interpreted by the courts, directed rather to legislative than administrative action. They prevent the legislature, for example, from declaring that to be a nuisance which in the opinion of the court is not a nuisance, but once the character of nuisance is admitted, they permit of the most drastic action in its abatement on the part of the administration. Constitutional limitations do, of course, indirectly limit administrative activity in so far as that activity is based upon legislation, since the legislature may not grant to administrative authorities a power which it does not in itself possess. But, apart from such a limitation, constitutional provisions do not seriously affect many forms of administrative activity. We may, therefore,

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almost leave out of consideration the private rights provisions of American constitutions in the treatment of our subject.

I have said that our attention must be directed both to administrative methods and to the judicial methods available. Let us now take up one by one the most important methods by which administrative authorities act, and consider at the same time the remedies open to the individual who deems himself aggrieved by that action.

I. Administrative Regulations.

The first method of administrative action to which I wish to call attention is that of regulation. The characteristic of this method is that it attempts to affect the relations of private individuals through the promulgation of rules of conduct of general application. In general, it may be said that few, if any, administrative authorities have in accordance with American law the right to issue such regulations in the absence of statutory authorization to that effect. (Potts vs. Breen, 167 Ill. 67.) On the other hand, it is just as true that there are a great number of administrative authorities to which such a power of regulation has been given by legislation. This is so, notwithstanding it is the theory of our law that our legislatures may not delegate legislative power. For our courts have commonly held constitutional statutes granting to administrative authorities the power to regulate the details which must be regulated in order that much legislation may be made really effective. (Buttfield vs. Stranahan, 192 U. S. 470; Health Department of City of New York vs. Rector, etc. of Trinity Church, 145 N. Y. 32.) It is also constitutional for the legislature to delegate to administrative authorities the power to impose criminal penalties for the violation of administrative regulations. (O'Hover vs. Montgomery, 120 Tenn. 448.) And it is often the case that a provision of the penal code or some other statute specifically provides penalties for the violation of administrative ordinances. Indeed, without any such provision of law it is competent for local corporations both to issue local ordinances or by-laws and to provide penalties in the nature of fines which may be recovered in an action for debt. (Mayor of Mobile vs. Yuille, 3 Ala. 137.)

Where a provision of statute clearly authorizes an administrative authority to promulgate such regulations, it is seldom the case

that its discretion in the exercise of its regulatory powers is subject to any control. Of course, as has been said, the legislature may not delegate to an administrative authority a power which it does not itself possess. Any attempt on the part of an administrative authority to enforce a regulation which it has not the power to make may in the proper method be rendered nugatory by the courts. But so long as an administrative authority keeps within the power which has been constitutionally delegated to it, its discretion in the exercise of its power of regulation is not subject to effective control. It is seldom that a regulation, to be valid, needs the approval of any superior administrative authority. It is almost never the case that a regulation issued by an administrative authority is laid before the legislature for its action, as frequently happens in Great Britain. The only possible control which may be exercised over the discretion of an administrative authority in the issue of regulations is exercised by the courts through their power to declare void as unreasonable a regulation which is not clearly within the power possessed by the authority issuing it. As in not a few instances the power of regulation is granted in general terms, it is often within the jurisdiction of the courts thus to declare void as being unreasonable a regulation of an administrative authority. Where, however, the power to promulgate the particular kind of regulation at issue is certain, the question of its reasonableness is regarded as settled. The courts may not declare it void as unreasonable any more than they may declare a statute of the legislature void for the same reason. (O'Hover vs. Montgomery, 120 Tenn. 448, 467.)

We may say, then, that for most practical purposes:

First: Administrative authorities may and do possess wide powers of regulation; and

Second: The exercise of the regulatory power of administrative authorities is not, in very many important cases, subject to an effective control.

Both of these statements are true, notwithstanding the fact that these regulations are frequently adopted without any public hearings, by authorities organized in such a way that debate with regard to these regulations is impossible. The result is that it is not infre-

quently the case that the only view which receives expression in ordinances or regulations issued is the official view.

Furthermore, it is not seldom the case that regulations are adopted and enforced without adequate publication. For it is by no means clear that the law requires publication as a necessary prerequisite to the validity of an ordinance or regulation.

The individual is thus not sufficiently protected, either through the procedure required as a preliminary to the adoption and issue of regulations, or through the methods of control provided against the arbitrary use of discretion by administrative authorities in the exercise of their powers of regulation.

II. Administrative Action of Individual Application.

The second method of administrative action consists in the taking of action which affects some particular individual case.

The number of these orders or decisions of individual application, as they are sometimes generically called, is legion and their variety is very great. We may perhaps, however, attempt to classify them according as they affect what the law regards on the one hand as rights, and on the other as privileges. In the case of such actions of individual application as affect rights we may distinguish orders that something be done from decisions as to questions of fact or of law. In the case, however, of administrative action as to privileges, most, if not all, of the cases will fall under the head of decisions.

A. Administrative Decisions Affecting Private Rights.

1. *In Matters of Taxation.*

In matters of taxation, administrative action of individual application may, if we analyze administrative action generally, be said to be taken with the purpose of expressing in the concrete case the will of the state. Thus a statute may provide in a general way the taxes which all taxpayers of a certain defined class shall pay. This statute may furthermore be supplemented by administrative regulations such as the detailed and complex, if not incomprehensible, regulations with regard to the federal income tax. But no matter how detailed such statutes and regulations may be, it is impossible for any par-

ticular individual taxpayer to know what amount in dollars and cents of tax he will have to pay before a decision has been reached by the competent administrative authorities. Such a decision in almost all American tax laws is called an assessment or an appraisal.

The protection of private rights against the exercise of arbitrary administrative discretion is in tax, as in most other matters, dependent first upon the procedure which must be followed by tax-assessing and collecting authorities; and, second, upon the judicial remedies which are open to the taxpayer. The general rule of our constitutional law is that the due process of law clause requires that some time during the assessment or collection proceedings the taxpayer must have the right to be heard. If such an opportunity is accorded to him during the administrative assessment proceedings, compliance with the constitutional requirement has been had and there is no constitutional necessity to provide a judicial remedy, or even an administrative appeal. (Pittsburgh, C., C. & St. L. Ry. Co. vs. Backus, 154 U. S. 421.) In this case it is said by Mr. Justice Brewer: "A hearing before judgment with full opportunity to present all the evidence and the argument which the party deems important is all that can be adjudged to be vital. Rehearings and new trials are not essential to due process of law, either in judicial or administrative proceedings. One hearing, if ample, before judgment satisfies the demand of the Constitution in this respect." What has been said is, of course, true only as to the valuation of a taxable object, such as property, income, franchise, or import. It would probably be unconstitutional, though this is not absolutely certain, for the legislative authority to cut off the judicial remedy with regard to legal questions involving liability to taxation. Certainly such action would be unconstitutional if the attempt were made to deprive the courts of the power to determine the constitutionality of the action of the legislature in tax matters.

The law, however, sometimes provides something in the nature of a judicial remedy in the case of mere assessments or appraisals. In some states, as in New York, the writ of certiorari to review a determination has been made applicable to many tax assessment cases. In other states there is some form of statutory appeal to the courts from tax assessments. In general, however, it may be said that ap-

peals to the courts with regard to the question of fact involved in assessment, appraisal or valuation proceedings are not permitted.

The exercise of arbitrary administrative discretion in tax proceedings is perhaps carried the furthest in the law of the federal government. Here, as a result of statute as interpreted by the courts, practically every judicial remedy which elsewhere is open to the individual is cut off with the exception of an action for money had and received, brought after involuntary payment under protest against the tax collector. (Cary vs. Curtis, 3 How. U. S. 236; Cheesebrough vs. United States, 192 U. S. 253; Wright vs. Blakeslee, 101 U. S. 175.) And on such suits mere questions of valuation not involving questions of law affecting taxability may not usually be considered. Thus, the customs law has often specifically provided that the appraisal of imported goods for customs revenue purposes, when made by the competent administrative authorities, is final. (Passavant vs. United States, 148 U. S. 214.)

The administrative decision fixing the value for purposes of taxation of a taxable object has in some cases also the characteristic of an order that something be done in the future, that is, that a certain sum of money be paid. Where this is not the case, this decision is made the basis of such an order. The amount to be paid is determined as the result of a simple mathematical calculation consisting in the multiplication of the ascertained assessment valuation by the tax rate. It is frequently the case that this order is executed by summary administrative process, and no suit in a court for the collection of the tax is provided in the law. Such summary administrative proceedings have been held by our courts to be the due process of law required by the Constitution. (McMillen vs. Anderson, 95 U. S. 37; Palmer vs. McMahon, 133 U. S. 660, affirming 102 N. Y. 176; Commonwealth vs. Byrne, 20 Grattan Va. 165.)

Where no provision for even an administrative hearing has been made by the law, the courts have sometimes, even in the absence of statute to that effect, permitted the individual taxpayer prior to the collection of the tax to have an injunction to restrain its collection, or subsequent to its collection to have an action against the collector for money had and received. Due process of law would seem to make necessary the existence of some such remedy. The in-

junction, however, is only very cautiously used (Dows vs. City of Chicago, 11 Wall. 108), and is absolutely prohibited by Congress in the case of the taxes levied by the United States (Snyder vs. Marks, 109 U. S. 189), while the action for money had and received is subject to so many limitations that its effectiveness as a tax remedy is greatly curtailed.

Finally, all such judicial proceedings are customarily regarded as collateral rather than direct proceedings, so far as concerns an assessment made after a hearing. Where a hearing has been provided and the decision on such a hearing has not been attacked directly in the manner provided by law, the court will consider in these collateral proceedings only questions involving taxable jurisdiction (Palmer vs. McMahon, 133 U. S. 660.)

The result is that the individual is, by the American law of taxation, quite commonly subjected to the arbitrary discretion of the tax authorities so far as concerns questions of assessment valuation, and, because of the inadequacy of the judicial remedies available, finds it difficult, if not impossible in many cases, to secure a judicial review even of questions of law. This is particularly true of the smaller taxpayers, who, under the present methods of judicial proceedings, cannot afford the expense of an appeal to the courts against what they believe to be the unauthorized and illegal decisions of tax officers.

2. *In Matters of Police.*

The gradual change in the United States from an agricultural to an industrial life, and the great increase of urban communities, have presented problems for the solution of which little if any provision was made in the common or statute law which we Americans received from England. English methods of dealing with what have been spoken of as "matters of police" were based on the law of nuisance. This law differentiated private from public nuisances, and apparently authorized any one to abate a public nuisance, while only one specially injured might abate a private nuisance. It did not make effective provision for anything in the nature of a public authority whose duty it was to promote the public safety and convenience. Indeed, almost the only ways in which public authorities

participated in nuisance abatements were, first, in the indictment and prosecution of public nuisances; and, second, in determining, in the case nuisances had been privately abated, what were the rights of the parties concerned. For individuals who attempted to exercise their legal rights in the abatement of private or public nuisances did so at the risk of having the courts hold that what had been abated was not a nuisance.

The whole English law on this subject is a good example of those methods of self-help which are characteristic of rather primitive social conditions and of an undeveloped legal system based on individualistic rather than social conceptions.

The English law, as we inherited it, was naturally unfitted for the complex relations of modern industrial and urban life. Soon after American social conditions began to change, attempts were made to change the law. The first attempts were made in the City of New York about the middle of the nineteenth century. The first point of attack was the method of abatement of nuisances by criminal proceedings. Such proceedings had shown themselves to be absolutely ineffective. The ordinary petit juries had been so regardful of private rights where the interests of the public were involved that the maintenance through existing methods of reasonably sanitary conditions was impossible. A law was, therefore, passed providing for an administrative sanitary authority—the board of health—whose duty it should be to preserve the public health. To this body was given the power, after granting a hearing to individuals who might be affected by its orders, to declare specific conditions to be nuisances, and to abate them. The constitutionality of this method of action was bitterly contested in the courts, but was upheld, the courts taking the view that the administrative hearing provided was due process of law, and that one who had not taken advantage of the opportunity to be heard before the board of health provided by law could not, in a subsequent collateral proceeding, such as an injunction to restrain the board of health from enforcing its order, attack that order as invalid. (Metropolitian Board of Health vs. Heister, 37 N. Y. 661 (1868).) But for some reason or other the example set by New York has not been generally followed throughout the country, nor

has the procedure thus provided for the abatement of nuisances been commonly applied even in the State of New York itself.

The methods commonly adopted in this country for the preservation of the public health are adaptations of the old, primitive English methods. They seldom provide for anything in the nature of a hearing before sanitary authorities as to the actual existence of the nuisance of which complaint may be made. (See People ex rel. Copcutt vs. Board of Health, 140 N. Y. 1; North American Cold Storage Co. vs. City of Chicago, 211 U. S. 306.) They are almost always based upon the idea of summary abatement, a sanitary officer possessing in theory only the powers possessed by private individuals under the early English law. There is thus little opportunity to distinguish between a decision as to the existence of a state of facts, i. e., the presence of a nuisance, and an order that something be done, i. e., that the nuisance be abated.

Often the law does not require even notice to the parties affected (Health Department vs. Trinity Church, 145 N. Y. 32), though such notice is frequently given as a matter of fact.

These very summary and arbitrary proceedings have, however, usually been accompanied by such extensive judicial remedies that the effectiveness of nuisance removal proceedings would have been seriously diminished had the courts not applied the remedies with considerable caution, and had the application to the courts for the exercise of their powers of review not involved an expense too great to be justified except in the most important cases.

The most noticeable points with regard to which the courts have insisted on their powers of review are two:

In the first place, they have held, as has been said, that neither the legislature nor any administrative authority to which the legislature has delegated power may declare that to be a nuisance which is not a nuisance. (Evansville vs. Miller, 146 Ind. 613; Yates vs. Milwaukee, 10 Wall. 497.) This means, in plain English, however the courts may disguise and becloud the issue, that the legislative determination as to what conditions are nuisances is subject to judicial review. This rule of law is, however beneficent its operation may be and however wise the courts may have been in applying it, inconsistent with our general theory of legislative discretion. Its

application, furthermore, has, in conditions such as have existed in New York City, been a serious hindrance to the progress of reasonable social reform. The decision of the New York Court of Appeals, for example, that the law prohibiting the manufacture of cigars in tenement houses was unconstitutional has very seriously hampered the administration of the public health law in that city, as well as made difficult, if not impossible, the regulation of sweated labor.

In the second place, the courts have claimed in the exercise of their powers of review the right to determine whether health and public safety authorities have acted within their jurisdiction, even where such jurisdiction has been dependent upon the existence of states of facts the existence of which can be determined only as the result of investigation by scientific experts. Thus, for example, a board of health may have the right under the law to kill all horses having glanders. They examine certain horses by their experts, and determine that these horses have glanders. The court, in a suit for trespass against the health officers, determines by a jury that the horses did not have glanders, and gives judgment against the health officers. (Miller vs. Horton, 152 Mass. 540.) In one rather famous instance the case as reported would seem to show that the jury determined that the disease which brought about action by the health officers, that is, anthrax, did not exist, although those officers had, as a result of a bacteriological examination, reached a contrary conclusion. (Lowe vs. Conroy, 120 Wis. 151.)

If the courts exercised with great freedom the powers which they thus claim, an effective health administration would be impossible. Fortunately, they do not do so. On the contrary, they are very apt to regard the action complained of, except in somewhat extraordinary and aggravated cases, as within the jurisdiction of the health or other authorities. (Cf. Raymond vs. Fish, 51 Conn. 80; Salem vs. Eastern R. R. Co., 98 Mass. 431.) Once that is admitted, there is no remedy open to the individual. He is almost an outlaw. Alterations in his property involving great expense may be ordered, although he has never had an opportunity to be heard. (Health Dep't vs. Trinity Church, 145 N. Y. 32.) He may be deprived of his liberty on the supposition that he has a contagious disease which, as a matter of fact, he may not have. His children may be torn from his arms

and placed in a pest house. (Hoverty vs. Bass, 66 Me. 71.) And in no case does he have anything in the nature of an effective remedy.

The courts usually justify their decisions as to the remediless position of the individual in these cases by calling attention to the necessity of haste, and the consequent impossibility of providing a hearing. The argument is valid with regard to cases of infectious disease, impure food, and a series of similar matters. It is not valid, however, in cases such as the reconstruction of buildings which, when erected, conformed to the law. But in such cases it is commonly the rule that no hearing is either provided by law or granted by police authorities. Cases are too common where orders are issued by health or other police authorities, compliance with which involves the expenditure of large amounts of money, where the house owner has never had the slightest opportunity to be heard and first learns of the proceedings through the service on him of the order. Instances, furthermore, are not uncommon where the order is accompanied with a list of firms who will be glad to compete for the contract necessitated by the doing of the work called for by the order.

Practically the only effective remedy which the individual has in these cases is an injunction to restrain the enforcement of the nuisance removal order. In these injunction proceedings a number of questions may be raised. In the first place, the constitutionality of the law under which action is being taken may be inquired into. In this respect the judicial control is, in my opinion, as I have indicated, too extensive, since as a result legislative discretion is subject to review. In the second place, where the action complained of is not clearly within the authority of an admittedly constitutional statute, its reasonableness may be questioned. This is as it should be if no other means of review is provided.

The appeal thus provided against the reasonableness of administrative action is not, however, nearly so effective as it appears to be at first blush.

Its ineffectiveness is due in part to the fact that courts do not care, for fear of a flood of litigation, to entertain any but the most aggravated cases. Furthermore, these cases come before them, to an extent at any rate, prejudged, although the complainant may not have had, and usually has not had, his day in court. He must, there-

fore, make out a very strong case in order to obtain relief. Finally, these cases are rather technical in character and outside of the ken of judges whose main work is the application of the rules of law governing the relations of private individuals, one with another.

I have said that the only practical remedy is the injunction. It is, of course, true that the individual deeming himself aggrieved in those cases has, theoretically at any rate, the right to sue the offending administrative officer for trespass after the order complained of has been enforced, and that where disobedience of an administrative order is punishable criminally he may refuse to obey the order and, when prosecuted, put up his defense. In both these cases about the same questions may be raised as may be raised in the case of the injunction. As a matter of fact, however, the civil remedy in damages is of little practical use. Judgments against officers rarely have any great pecuniary value. As for the defense in criminal proceedings, while it may be desirable that it be available, it is not, any more than the action in damages, of great practical value. For few people like to take the risk of criminal proceedings.

Finally, in both the civil action in damages, and in criminal proceedings, the attitude of the court, certainly so far as the legal questions raised are concerned, is about the same as in the case of injunctions. The case comes to the court prejudiced. The only amelioration of the lot of the individual is to be found in the attitude of the jury, which is apt, as has been said, to consider private rights rather than social interest.

3. *Administrative Decisions Affecting Privileges.*

So far we have confined our consideration to cases where private rights have been involved. There is, however, a large number of very important cases where privileges, as the law regards them, rather than rights, are in question.

Most of the cases involving privileges, the exercise of which is dependent upon administrative decisions, have probably arisen under the federal government. There is, however, one rather large class of cases which are regulated by state law. These cases have to do for the most part with licenses which permit the individual to do what would be illegal did he not possess such a license.

In general, there are two lines of decisions in the states with regard to this matter. One holds that the legislature may not constitutionally provide that the grant of a license to do a thing which, without such a license, would be illegal, shall rest in the arbitrary discretion of an administrative authority. These decisions hold that the legislature must lay down in advance the conditions which must be present in order that a license may or may not be issued, and declare unconstitutional license laws which do not contain such conditions.

The other line of decisions takes the contrary view and regards as proper laws which place the licensing power in the discretion of administrative authorities. The decisions of the United States Supreme Court adhere to this view. (Wilson vs. Eureka City, 173 U. S. 32.) They hold that the due process of law required by the Fourteenth Amendment is present where administrative authorities have complete discretion in license matters.

The protection accorded the individual by the first line of decisions is not, however, nearly so great as it would at first appear to be. For there has not as yet been developed in our law an effective remedy against the use of discretionary power by administrative officers through the exercise of their power to render mere decisions. It is, of course, true that under the first line of decisions no person can be criminally punished for acting without a license where a statute which requires a license attempts to give complete discretion to licensing authorities. That is, he may transact the business without a license and, when prosecuted, set up as a defense the unconstitutionality of the law requiring it. But it is to be remembered that where administrative discretion in the issue of licenses is in theory limited, there is seldom an effective remedy where the license is refused, because of the decision of the licensing authority that the conditions necessary for the grant of the license are not present. Thus, take the case of liquor licenses which are to be granted only to persons of good moral character, or on the application of a certain number of reputable persons. The refusal of the issuing authority to grant the license because of the character of the applicant or his sponsors is seldom if ever reviewable by the courts. (See Devin vs. Belt, 70 Md. 352; United States ex rel. Roop vs. Douglas,

19 D. C. 99.) Take, again, the case of the grant of a license to practise medicine or dentistry to every graduate of a reputable medical or dental college. The refusal to grant the license to a person on the ground that he is not the graduate of a reputable institution may not usually be judicially reviewed. (People ex rel. Sheppard vs. State Board, etc., 110 Ill. 180.) Indeed, it may be said that almost the only cases in which the state courts will review the determinations of licensing authorities are where those determinations are clearly opposed to the admitted facts, or have without question been made as the result of the abuse of discretion. Such cases as have been decided, furthermore, have come up commonly on demurrer which has admitted the alleged abuse of discretion. (See Illinois Board, etc., vs. People ex rel. Cooper, 123 Ill. 227.)

The courts have exhibited this reluctance to exercise a control over the discretion of licensing authorities in the issue of licenses, although it is seldom the case that licensing laws provide for anything in the nature of a formal hearing for the applicant for a license.

In the case, however, of the revocation of a license other than a liquor license, the courts usually insist that the person whose license is to be revoked must have a formal hearing. (City of Lowell vs. Archambault, 189 Mass. 70.) There is a case in the New York courts, however, which holds that a license to sell milk could be revoked without notice or a hearing. (Metropolitan Milk and Cream Co. vs. City of New York, 113 App. Div. 377.) But the facts showed that the person whose license had been revoked had been several times convicted for selling impure milk. The court, therefore, refused him a peremptory mandamus to compel the licensing authority to rescind its action in revoking the license.

I have said that the most important cases with regard to privileges have come up in connection with legislative acts of the federal government.

These cases have had to do with the immigration of aliens, the importation of forbidden products, the public lands, military pensions, and the use of the mails. The United States Supreme Court has in its decisions recognized a very large power of uncontrolled discretion in administrative offices. It has thus accorded to administrative officers the right finally to determine whether an alien immi-

grant may lawfully enter the United States (Nishimura Ekin vs. United States, 142 U. S. 651), whether imported teas come up to the required standard (Buttfield vs. Stranahan, 192 U. S. 470), whether a person of Chinese race was born in the United States and is, therefore, a citizen (United States vs. Ju Toy, 198 U. S. 253), whether a person is making unlawful use of the mails (Bates & Guild Co. vs. Payne, 99 U. S. 106; Public Clearing House vs. Coyne, 194 U. S. 497), and whether clearance papers shall be issued to a vessel sailing from a United States port where it is alleged that the officers of such vessel have violated a law of the United States and refused on demand to pay the fine appended by law to such violation (Oceanic Steamship Co. vs. Stranahan, 214 U. S. 320.)

Almost the only instances in which the Supreme Court has not regarded as final the action of administrative officers acting in these cases are where they have exceeded their jurisdiction, e. g., by attempting to exclude as an alien one who was not an alien (Gonzalez vs. Williams, 192 U. S. 1), or by denying to a person the use of the mails for a reason not provided for in the law (Magnetic School of Healing vs. McAnnulty, 187 U. S. 94.) In some of the cases the court has recognized the finality of the administrative determination as to mixed questions of law and fact as well as to mere questions of fact. (Public Clearing House vs. Coyne, 194 U. S. 497.)

The result of ~~our~~ investigation would seem to be, then, that although under the American law individuals may be more than amply protected in their rights against unconstitutional legislative action, they are very largely left to the tender mercies of administrative discretion in the case not only of their privileges, but as well of the rights recognized as theirs by the constitutional bills of rights. American law has not as yet devised effective remedies against administrative discretion. Nor has it provided a system of administrative procedure in these matters which assures to the individual a hearing before orders are issued, compliance with which involves the incurring of great expense.

The unfortunate position in which the individual is placed over against administrative authorities is a continual source of corruption. Where he has no right to a hearing and no effective judicial remedy, it is almost certain that there will be many cases in which

the inspectors upon whose report orders to be summarily executed are issued will be paid to report conditions not as they are, or will extort blackmail from the individual before they will report those conditions as they are. The danger is all the greater in this country because of the incapacity and lack of character of many of the employees in the civil service of our cities, where the conditions are such as to demand more than elsewhere administrative regulation and control.

The unfortunate position in which our people are thus placed is one in which they should not be placed. It is due to the primitive character of our legal system. In both England and on the Continent the change in social conditions which has taken place in the last century has resulted in the adoption of proper administrative procedure and of adequate judicial remedies. A study of the recent development of the administrative law of Europe would reveal the fact that we have much to learn as to the protection of private rights from countries like France and Germany. The law of these countries has not, it is true, subjected in any large measure legislative discretion to judicial control. It has, however, given to the individual a protection against the arbitrary exercise of administrative discretion for which we look to our law in vain.

What has been said is particularly true of the French law, which has, through the recent decisions of the Council of State—the highest of the special administrative courts—the peculiar contribution of France to the science of administrative law—a remedy against administrative action which surpasses in effectiveness any remedy which can be found in other legal systems.

It is greatly to be regretted that in our system of legal education there would appear to be at the present time no place for the serious study and investigation of these and similar legal problems. What seems to be needed is that somewhere in the United States, preferably in connection with some one of our universities, there should be established a school or department not for the education of lawyers for the practise of the law, but for the study of jurisprudence, in which greater attention might be given than is now possible to the solution of the many legal and political problems which the great changes in our economic and social life are with increasing emphasis bringing to our attention.