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A CRITIQUE OF RECENT ADMINISTRATIVE LAW IN THE COURTS AND LEGISLATURE OF PENNSYLVANIA

By

ROBERT B. ELY, III*

Introduction

In examining the administrative law¹ of Pennsylvania we shall need some scale of values with which to compare our findings.

Let us take the viewpoint of one who has tried to reach impartial conclusions in the light of the intensive discussion of the general subject, conducted during the last decade by leading members of the bar, bench and government, as reported in the leading bar association journals and law reviews.² The credo of such a person would probably be roughly as follows:

Whether as boon or bane, administrative agencies are here to stay. They were already in existence when the Colonies became States.³ They have since

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¹ This term is taken to include, as indicated in the Fifth Decennial Digest, page 630 "the general principles of law governing the status, organization, powers and proceedings of . . . administrative agencies, officers and agents, especially as affecting private persons and property, and the judicial review and enforcement of the decisions of such agencies, officers and agents."

² The intensity of the discussion is shown by the fact that since 1936 there have been approximately 125 leading articles and editorials published in the AMERICAN BAR ASSOCIATION JOURNAL alone.

As an indication of the eminence of the participants in this discussion, one finds the following among the contributors to that Journal: An Associate Justice of the Supreme Court of the United States (24 A.B.A.J. 282); Judges of 3 United States Circuit Courts of Appeals (26 A.B.A.J. 5, 130; 27 *id.* 71); The Chief Justice of the Supreme Court of New Jersey (24 A.B.A.J. 267; 34 *id.* 896); The Attorney General of the United States (27 A.B.A.J. 660); A former Solicitor General of the United States (33 A.B.A.J. 434); Two Chairmen of the United States Senate Committee on the Judiciary (32 A.B.A.J. 827; 34 *id.* 877; 35 *id.* 379); A Chairman of the House Committee on the Judiciary (30 A.B.A.J. 3); The Chairman of two Federal Commissions (26 A.B.A.J. 342; 30 *id.* 266); Three Presidents of the American Bar Association (24 A.B.A.J. 267, 29 *id.* 681; 31 *id.* 63; 32 *id.* 17).

³ For example, the Act of September 22, 1785, 2 Smith Laws 350, required the "supreme executive Council of this commonwealth" to appoint "some proper and discreet person to be the measurer of all kinds of corn and salt imported or brought into the port and city of Philadelphia for sale," and authorized the person thus appointed to "employ a sufficient number of able-bodied and trusty persons to act as his deputies". Senator McCarran devotes to this fact the introduction of his article, *A Needed Reform: A Special Administrative Court*, appearing in 35 A.B.A.J. 379.

grown steadily in number, size and influence.⁴ There is no evidence of any trend toward their wholesale abolition.⁵

Like all human institutions, administrative agencies are neither better nor worse than the persons who compose and use them.⁶ Their activities need not amount to a "New Despotism",⁷ nor will they produce a panacea for social ills. The most that can be said is that in times of rapid social change there arise governmental problems whose number and complexity require greater speed and flexibility of action by more specialized experts than are available through traditional judicial procedures.⁸ To solve these special problems it is proper to relax slightly the rule of strict separation of the powers of government, and to make use of bodies which have certain of the powers, and perform certain of the functions, of both the legislature and the judiciary.

In assessing the value of the rules which make up the body of administrative law in any jurisdiction, one may well be satisfied with a preliminary examination "in gross". If one finds certain general principles clearly defined and well established in a given body of administrative law, and if the political history of the people living under that law indicates no tendency toward unwholesome eccentricity (whether radical or reactionary), then there is little need to be concerned over the precise manner in which these principles have been implemented at any given time. Specific statutes, decisions, rules and regulations can easily be supplied or removed at the will of those who make and administer the law.

The general principles which form the sound core of a healthy body of administrative law are these:-

⁴ THE PENNSYLVANIA MANUAL, Volume 88 (1947-48), prepared under the direction of the Commonwealth's Secretary of the Department of Property and Supplies, devotes 139 pages of fine type to listing the names of the officials and employees of the various departments, bureaus, boards and commissions of the Commonwealth's Administrative Organization, with a chart of their inter-relationships set out opposite page 1088.

⁵ Some 75 agencies and offices were abolished by section 2 of the Administrative Code of 1923 (June 7, P.L. 498) and its amendment of 1927 (April 13, P.L. 207); but this was merely a clearing away of dead wood, so that the far greater number of remaining agencies and offices might more efficiently perform the "executive and administrative work of this Commonwealth." When the last Administrative Code of 1929 (April 9, P.L. 177) was enacted, seven more commissions were abolished; but, as indicated in note 9, below, those remaining far outnumbered them. Since 1929 additions have been far in excess of removals.

⁶ See, for example, the discussion relative to the selection of the 350 Hearing Examiners to function under the Federal Administrative Procedure Act (33 A.B.A.J. 1, 213, 250, 421, 580, 688, 910; 34 *id.* 179, 420, 877, 896) and to the establishment of rules as to admissions to practice before Federal Agencies (33 A.B.A.J. 307; 34 *id.*, 877, 896). A very complete review is found in the Civil Service Report of January 31, 1949, on *Federal Hearing Examiners*, published in the Bulletin of the Administrative Law Section of the American Bar Association, Volume 1, Number 4.

⁷ The term used by the Lord Chief Justice of England as the title for his book on British administrative law, quoted by Chief Justice Arthur T. Vanderbilt as background for *The Place of the Administrative Tribunal in Our Legal System* (24 A.B.A.J. 267). See also the quotation from Keeton *The Twilight of the Common Law* reprinted in Vol. CXXI THE LEGAL INTELLIGENCER (Philadelphia) 182 (August 18, 1949).

⁸ As was said by Hon. Orie L. Phillips in *The Courts and American Democracy* (26 A.B.A.J. 130) "No doubt there are many fields where a body of impartial experts can better implement a statute by rules and regulations than can [the legislature] and better find the facts that condition the determination of an administrative controversy than can the courts . . ."

- (1) "Separation of Powers" is still to be recognized as a basic principle of the American form of government, and no greater departure should be made from it than the exigencies of any given problem require. That is to say:-
- (2) The legislature should not delegate its authority to enact the basic rules of socially acceptable conduct;
- (3) The judiciary should not be relieved of its duty of interpreting and applying these rules to facts found in individual cases.
- (4) When performing the quasi-legislative function of promulgating rules and regulations, administrative bodies should, as far as possible, observe the rules for enacting a statute.
- (5) When performing the quasi-judicial function of enforcing these rules and regulations, administrative tribunals should, as far as possible, observe the rules for rendering a judgment at law or a decree in equity.
- (6) To the extent that conventional legal and equitable remedies are not adequate for the protection of affected parties against improper activities of administrative agencies and officers, extraordinary remedies should be made available for that purpose.

It goes without saying that the foregoing principles should be generally understood and applied.

Pennsylvania Definition of These Principles

Let us, then, first ask how well these principles are defined and established in the administrative law of Pennsylvania. The answer cannot be absolute, since the principles, themselves, are and must be relative. When one attempts to render more exact such of their phrases as "to the extent" and "as far as possible", one leaves the field of legal discussion and enters that of political dispute. The most that can be done in a paper of this nature is to give some indication of the degree to which the lawmakers of the Commonwealth have recognized and attempted to comply with these standards.

It would be tedious and virtually impossible to submit the whole, great bulk⁹ of Pennsylvania's administrative law to complete analysis. Moreover, as

⁹ Consider these statistics:—The three titles "State Government", "Taxation and Fiscal Affairs" and "Municipal and Quasi-Municipal Corporations" cover just over 1000 pages of PURDON'S PENNSYLVANIA STATUTES, 1936 Compact Edition, or nearly one-third of its total contents. This percentage of legislative effort devoted to administrative law would seem to be about average for the last century. In the 1943 biennial session of the General Assembly no less than 129 of the 373 laws enacted deal with points of "Administrative Law" as defined above; while in the two annual sessions of 1842 and 1843 about 80 of the total of 303 laws approved by the Governor were devoted to the same field.

So far as the courts are concerned, a review of the reports covering the years 1943-1949, inclusive, show the following numbers of decisions on points of administrative law: Supreme Court 203, Superior Court, 365, *nisi Pruis* cases appearing in the District & County Reports, 257. To this total of 825 should be added a relatively insignificant number of instances in which Pennsylvania rules were considered by the Federal Courts.

Turning to the work of the administrators, themselves, one finds that the PENNSYLVANIA REGISTER, to be more fully discussed below, contains in its original edition and two supplements, a total of about 1300 pages of effective administrative rules and regulations.

has been said, it is unnecessary to do so. For these reasons we shall restrict ourselves mainly to detailed discussion of only the leading general statutes on the subject and of the decisions since 1943 of the Pennsylvania Supreme Court, the court of last resort (even though, in view of the volume of its work in the field,¹⁰ the Superior Court is more nearly the "Court of Administrative Appeals").¹¹

1—*Separation of Powers*

Pennsylvania's Constitution shows clearly on its face that it is based on this traditional principle of American government;¹² and the courts of the Commonwealth have repeatedly declared this to be a fact.¹³ However, that Constitution is equally clear in recognizing, both in general and specific terms, the propriety of using administrative techniques where circumstances warrant.¹⁴ The courts, in turn, have time and again upheld the propriety of creating agencies with quasi-legislative and quasi-judicial powers—interfering only when they were convinced that the relaxation of basic principles had gone too far.¹⁵

2—*Delegation of Authority*

In accordance with the second principle mentioned above, it has been firmly established that the General Assembly may not delegate to a board or agency

¹⁰ See figures in note 9, above.

¹¹ This is particularly true in view of the fact that it is the court to which appeals must first be taken in the following classes of cases, among others, forming a considerable portion of its total work: Workman's Compensation (1915, June 2, P. L. 736, art. IV, section 427, and amendments, 77 P.S. 901); Liquor Control Board (1933, Sp. Sess., Nov. 29, P.L. 15, art. IV, section 410, and amendments, 77 P.S. 744-410; 1933, May 3, P.L. 252, section 13, and its amendments, 47 P.S. 96); Unemployment compensation (1936, Sp. Sess., Dec. 5, 1937, P.L. 2897, section 510 and its amendments, 43 P.S. 751).

¹² The legislative, executive and judicial powers of the Commonwealth are separately defined in section 1 of Article II, section 1 of Article IV, and section 1 of Article V, respectively, of the Constitution of 1873.

¹³ See, for example, the discussion in 362 Pa. 52, 66 A.2d 577 (1949), on the right of the legislature to regulate salaries of court attaches.

¹⁴ E.g. Article XII refers to "Public Officers" in the broadest terms; Article XIV deals with County Officers; Article XV has to do with cities and their government; and Art. X requires the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public schools."

¹⁵ See authorities cited in notes 16 to 56, below. In this respect, the courts of Pennsylvania have adopted the doctrine expressed in 16 CORPUS JURIS SECUNDUM, section 105 "Although the absolute separation of the powers of government is the theory of American constitutional government, it has never been entirely true in practice and is no longer an accepted canon among political scientists. The courts recognize that the separation of the powers of government is far from complete, and that the line of demarcation between them is often indefinite . . ."

the privilege of substantive enactment.¹⁶ However, the existence of this rule has been held not to prohibit leaving to such boards and agencies the implementation of general policies which the legislature has declared with sufficient particularity,¹⁷ nor creating agencies upon whose findings of fact decisions as to such policies are to be made.¹⁸ With regard to the type of agency used, it has been held that, except for a prohibition of certain special commissions,¹⁹ there is wide freedom of choice. For example, the agencies may be incorporated²⁰ or may take the form of municipal authorities,²¹ and interstate commissions²² as well as

¹⁶ In the following cases the Supreme Court has either held that the questions indicated are of such substantive character that the General Assembly may not give to an administrative agency absolute discretion to answer them, or, bearing in mind this rule against delegation of power, has refused to hold that such discretion was intended to be given:—What restrictions may be placed upon the common law right to discharge employees, 352 Pa. 586, 43 A.2d 894 (1945); When refunds or credits for taxes are to be granted, 343 Pa. 573, 23 A.2d 737 (1942); What are sufficient grounds for approval or disapproval of a contract between a public utility and an affiliate, 343 Pa. 109, 21 A.2d 920 (1941); What is to be the amount of a tax, 334 Pa. 449, 7 A.2d 302 (1939); What are proper working hours. *Note* in this case an attempt was made to delegate power to a *Federal* agency, 331 Pa. 255, 200 A. 672 (1938); What corporate securities must be registered, 331 Pa. 193, 200 A. 864 (1938); What corporations may file joint tax returns, 328 Pa. 450, 197 A. 239 (1938); What shall be the rate of tax levied to meet agency requirements, 328 Pa. 225, 195 A. 90 (1937); What is to be the standard form of fire insurance contract, 166 Pa. 72, 30 A. 943 (1895); What public buildings are to be erected, and what care is to be given them. *Note* the Act here was also violative of Article III, section 20 of the constitution, 156 Pa. 554, 27 A. 356 (1893).

As said in 343 Pa. 109, above, where an agency is given power to answer such questions, the legislature must set out "definite standards, policies and limitations" to which the agency is required to adhere. *Note*—The legislature may not through an agency, accomplish a scheme of control which it might not exercise directly, 356 Pa. 20, 51 A.2d 54 (1947).

¹⁷ *E.g.* The legislature may, if it defines with sufficient clarity the "primary standards", "basic purposes", "guides of conduct", or "conditions":—Confer on an agency the right of eminent domain, 359 Pa. 264, 59 A.2d 142 (1948); Delegate to redevelopment authorities the clearance of blighted areas, 357 Pa. 329, 54 A.2d 277 (1947); Give a board the right to fix prices of milk and license dealers in it, 322 Pa. 257, 186 A. 336 (1936); Permit a board to make rules governing the operation of mines, 310 Pa. 480, 165 A. 850 (1933), in which there is to be found a very complete enumeration of valid legislative delegations upheld by the Superior Court; Make approval of a board the condition precedent to annexation of territory by a school district, 305 Pa. 490, 158 A. 272 (1931); Give to a commissioner discretion in licensing bankers, 261 Pa. 129, 104 A. 505 (1918); Establish a board to censor motion pictures, 250 Pa. 225, 95 A. 433 (1915).

¹⁸ For example, it has been held proper:—

To permit an agency to make a survey to determine which mental health institutions are necessary and fit for administration by the State, 341 Pa. 49, 17 A.2d 212 (1940);

To create "a commission to study and report on use of devices and methods of transmission of information . . . in furtherance of gambling", 333 Pa. 203, 2 A.2d 612 (1938);

To give a commission power to "investigate . . . study and make recommendations . . . with reference to the housing problem", 331 Pa. 209, 200 A. 834 (1938);

To permit county officers to decide whether, as a matter of fact, it would be desirable to take advantage of privileges given by an Act of Assembly, 316 Pa. 65, 173 A. 289 (1934);

To permit a city official to estimate the amount of police protection required at public entertainments and to charge a license fee based on this estimate, 312 Pa. 311, 167 A. 891 (1933).

¹⁹ Section 19 of Article III of the Pennsylvania Constitution provides that "The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects . . . or to levy taxes or perform any municipal function whatever."

²⁰ Provided, of course, the corporation is not a private one; 325 Pa. 337, 190 A. 140 (1937).

²¹ Such as for the operation of city sewer and water properties, 332 Pa. 265, 2 A.2d 834 (1938).

²² 362 Pa. 475, 65 A.2d—(1949).

traditional departments, bureaus, boards, commissions and authorities.²³ These agencies remain, of course, subject to such scheme of control as their creator, the legislature, may provide, as by an Administrative Code;²⁴ and, if desired, the duty of supervising them may be entrusted to courts inferior to the Supreme Court.²⁵ Similarly, subject to reasonable limitations imposed by the Constitution upon methods of removal²⁶ and pay,²⁷ the legislature has a broad degree of discretion with regard to the tenure²⁸ and compensation of administrative officers, as well as to the transfer of duties from one to another.²⁹ Finally, the variety of tasks which may be given administrative personnel is quite wide. Subject in every case to the requirement that the rules of "due process" must be observed in the performance of any program,³⁰ the legislature may assign to agencies of its creation police powers previously exercised by municipalities,³¹ delegate general

²³ See those enumerated in part in the Administrative Code of 1929, April 9, P.L. 177, 71 P.S. 51 et seq., and more fully in the Pennsylvania Manual, note 4, above.

²⁴ Of which the constitutionality was upheld in 279 Pa. 234, 123 A. 792 (1924).

²⁵ As by requiring the common pleas court to appoint an advisory board to inspect hospitals, 289 Pa. 437, 137 A. 635 (1927); or a school board, 236 Pa. 327, 84 A. 902 (1912). However, Article V, sec. 21, of the Constitution provides that "no duties shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial . . ."

²⁶ 254 Pa. 45, 98 A. 782 (1916). The legislature may not, under section 4 of Article VI, take from a board with right to appoint the correlative right to remove. And see 225 Pa. 364, 74 A. 203 (1909). However, as said in 329 Pa. 390, 197 A. 334 (1938), this section of the constitution does not prevent "the abolition of the office itself, or the removal of the incumbent as an incident to a bona fide reorganization of a governmental agency," citing 327 Pa. 190, 193 A. 645 (1937), 377 Pa. 181, 193 A. 694 (1937), 176 Pa. 213, 35 A. 199 (1896), and 165 Pa. 284, 30 A. 835 (1894). Compare 327 Pa. 148, 193 A. 628 (1937), where the attempted abolition was of the officers, rather than of the office, and 128 Pa. 324, 18 A. 445 (1889), where abolition of an officer would have in fact been accomplished by termination of his salary.

²⁷ See section 13 of Article III of the Constitution, and, under it 266 Pa. 100, 109 A. 611 (1920), 238 Pa. 255, 86 A. 75 (1913), 225 Pa. 511, 74 A. 430 (1909). Compare 6 S. & R. 322 (1820), where the constitutional provision was not present. The legislature may not delegate its duty under Article XIV, section 5, to fix the salary of county officers, 350 Pa. 141, 38 A.2d 75 (1944).

²⁸ See 360 Pa. 304, 62 A.2d 30 (1948); 359 Pa. 144, 58 A.2d 454 (1948); 348 Pa. 101, 54 A.2d 59 (1943); 151 Sup. 522, 30 A.2d 726, 347 Pa. 418, 32 A.2d 565, 320 U.S. 782, 88 L.Ed. 469, 64 S. Ct. 192 (1943).

²⁹ See 351 Pa. 600, 42 A.2d 51 (1945); 346 Pa. 438, 31 A.2d 151 (1943); 50 Pa. 436 (1867).

³⁰ The leading case on this subject is 271 Pa. 346, 113 A. 357 (1921), discussed more in detail in note 42, below. For earlier phases of the litigation see 68 Pa. Sup. 561; 260 Pa. 289, 103 A. 744; and 75 Pa. Sup. 290. For U.S. Supreme Court opinion see 253 U.S. 287, 40 S. Ct. 527, 64 L.Ed. 908. Other typical judicial constructions are found in 289 Pa. 307, 137 A. 601 (1927) and 72 Pa. 82 (1872) to the effect that an officer may not compel liquidation of a corporation, or take land, without due notice and hearing. Note, however, the statement in 336 Pa. 469, 9 A.2d 408 (1939) that "due process is not synonymous with judicial process;" and the legislature may, within certain bounds, limit appeals to the courts, 336 Pa. 257, 9 A.2d 407 (1939). For further discussion, see 353 Pa. 98, 44 A.2d 291 (1945); 152 Sup. 279, 32 A.2d 40, reversed in 349 Pa. 184, 36 A.2d 777 (1943); 347 Pa. 191, 32 A.2d 236 (1943), reversed in 322 U.S. 174, 88 L.Ed. 1209, 64 S. Ct. 94, 518, discussed in 91 U. OF PA. L. REV. 764.

³¹ 250 Pa. 115, 95 396 (1915); 247 Pa. 232, 93 A. 327 (1915); and municipal acquisition of utilities may be made subject to administrative approval, 247 Pa. 26, 92 A. 1082 (1915).

powers of regulation in the public interest (including licensing and fixing of prices),³² and give elected agencies power of taxation.³³

From the foregoing one would conclude that Pennsylvania has reached a middle ground fairly between slavish adherence to rigid, narrowly defined, principles of government, on the one hand, and experimental anarchy on the other.

3—Preservation of the Judicial Role

Although there has been active debate on the subject,³⁴ it does not seem to the writer that there is in Pennsylvania any untoward tendency on the part of the legislature to oust the courts from their role as arbiters of questions of law. Section 41 of the Administrative Agency Law of 1945³⁵ provides for an appeal by any interested and aggrieved party to the *nisi prius* court³⁶ from any final administrative "order, decree, decision, determination or ruling . . . affecting personal or property rights, privileges, immunities or obligations".³⁷ As a further gesture of wise respect for the judiciary, it is provided in the next section that the procedure on such appeals "shall be in accordance with the rules of civil procedure promulgated . . . by the Supreme Court of Pennsylvania".³⁸ Finally, in section 45 of that law,³⁹ provision is made for further appeal to the Superior or Supreme Court as in other cases.

It is to be noted that this law does not apply to agencies which do not have statewide jurisdiction,⁴⁰ and not to all of those which do.⁴¹ However, it has been held in a number of cases, decided both prior and subsequent to the passage of the Administrative Agency Law, that even where the legislature has been silent with regard to, or has barred, appeal from the administrative agency,⁴² the courts still retain jurisdiction to review by way of certiorari,⁴³ upon which they can and should decide all questions of law, sufficiency of evidence, and

³² For an excellent general discussion, see 322 Pa. 257, 186 A. 336 (1936); and on rate-making, 268 Pa. 192, 110 A. 775 (1920).

³³ 329 Pa. 390, 197 A. 334 note 26, above. Compare 236 Pa. 327, 84 A. 902 (1912); and 358 Pa. 45, 55 A.2d 803 (1947) discussed in 96 U. OF PA. L. REV. 568.

³⁴ See Byse, *Administrative Procedure Reform in Pennsylvania*, 97 U. OF PA. L. REV. 22 (1948).

³⁵ 1945, June 4, P.L. 1388, as amended by 1947, July 7, P.L. 1367.

³⁶ *I.e.* the court of common pleas of Dauphin County.

³⁷ See definition of "Adjudication" in section 2(a) of the Administrative Agency Law, *supra*.

³⁸ *Id.* section 42. The rules themselves are to be found in 353 Pa. xxvii.

³⁹ Cited in note 35, above.

⁴⁰ See definition of "Agency" in Section 2(b).

⁴¹ Section 51 exempts proceedings involving settlement, resettlement, review or refund of taxes, bonus, interest or payment into the State Treasury; agencies from which appeals are provided in other statutes, adjudication of the Banking and Building and Loan Boards; and liquidation of banks, building and loans and insurance companies.

⁴² One criticism of Pennsylvania's administrative law is that this has been done too often.

⁴³ Cases on this point are so numerous that only the following are given as specimens: 357 Pa. 514, 55 A.2d 534 (1947); 355 Pa. 307, 49 A.2d 783 (1946); 355 Pa. 135, 49 A.2d 639 (1946); 352 Pa. 365, 43 A.2d 127 (1945); 341 Pa. 568, 20 A.2d 209 (1941).

abuse of administrative discretion.⁴⁴ Moreover, even when in a rate-making case⁴⁵ the Pennsylvania Supreme Court and the General Assembly had combined in an attempt to restrict the judicial role, the Supreme Court of the United States⁴⁶ made it clear that the legislature could not remove, nor could the courts surrender, the latter's proper role of deciding fundamental questions of law and fact.

In short, there does not appear to be much likelihood that in Pennsylvania the use of administrative techniques will be accompanied by undue diminution of judicial power and prestige. Conditions in that Commonwealth belie Dean Pound's statement⁴⁷ that "it is a significant sign of the times that the immunity of public officials from the supremacy of the law is being urged along with immunity of administrative agencies from judicial scrutiny of their acts."

However, on the other hand, one does not find the courts overzealous in interfering with the agencies created by the legislature. For example, it has been held that the courts should not:—interfere with the action of any agency in making rules of the type authorized by the statute creating it;⁴⁸ use their equitable powers to impede the proper function of administrative procedure;⁴⁹ permit the extraordinary writ of prohibition or other remedies to be substituted for prescribed appeals through administrative channels;⁵⁰ substitute their discretion for that given to an administrative agency;⁵¹ grant a right of appeal until complainants have exhausted available administrative remedies;⁵² nor

⁴⁴ See for example:—359 Pa. 461, 60 A.2d 37 (1948); 359 Pa. 536, 59 A.2d 927 (1948); 358 Pa. 636, 57 A.2d 862 (1948); 355 Pa. 307, 49 A.2d 783 (1946); 351 Pa. 475, 41 A.2d 670 (1945); 348 Pa. 267, 35 A.2d 290 (1944); 348 Pa. 266, 35 A.2d 291 (1944); 348 Pa. 263, 35 A.2d 289 (1944).

⁴⁵ 281 Pa. 346, 114 A. 369 (1921). Previous proceedings reported in 75 Pa. Sup. 290; 253 U.S. 287, 64 L.E. 908, 40 S. Ct. 527; 260 Pa. 289, 103 A. 744; 68 Pa. Sup. 561.

⁴⁶ In 253 U.S. 287, 40 S. Ct. 527, that Court said "The State must provide a fair opportunity [to a utility company] for submitting that issue [of confiscation by fixing too low a rate] to a judicial tribunal for determination upon its own independent judgment as to both law and facts . . ." Italics supplied.

⁴⁷ *Annual Survey of Law II—Further Analysis of Trends of Judicial Decisions*, 33 A.B.A.J. 1191 (1947).

⁴⁸ Such as a rule placing the burden of proof on one of the parties in a hearing, 314 Pa. 207, 171 A. 690 (1934). See also 159 Sup. 94, 46 A.2d 598, reversed on other grounds in 356 Pa. 43, 50 A.2d 336 (1946); and 346 Pa. 103, 29 A.2d 34 (1942).

⁴⁹ 360 Pa. 29, 61 A.2d 133 (1948); 354 Pa. 570, 47 A.2d 713 (1946); 354 Pa. 472, 47 A.2d 810 (1946); 353 Pa. 563, 46 A.2d 233 (1946); 351 Pa. 129, 40 A.2d 392 (1944).

⁵⁰ 360 Pa. 94, 61 A.2d 426 (1948); 348 Pa. 595, 36 A.2d 321 (1944).

⁵¹ Cases on this point are legion. This is the ground most frequently stated in refusing mandamus. Recent examples of the general proposition are:—362 Pa. 310, 65 A.2d—(1949); 362 Pa. 116, 65 A.2d—(1949); 361 Pa. 565, 64 A.2d 755 (1949); 361 Pa. 322, 64 A.2d 783 (1948); 357 Pa. 514, 55 A.2d 534 (1947); 356 Pa. 260, 51 A.2d 757 (1947); 355 Pa. 164, 49 A.2d 365 (1946); 354 Pa. 477, 47 A.2d 798 (1946); 354 Pa. 468, 47 A.2d 707 (1946).

⁵² 335 Pa. 337, 6 A.2d 831 (1939); 314 Pa. 34, 170 A. 119 (1934); even where constitutional questions are involved, 303 Pa. 469, 154 A. 799 (1931). Nor may an aggrieved party attack an administrative order collaterally as an alternative to administrative appeal; 288 Pa. 359, 136 A. 239 (1927); 220 Pa. 435, 69 A. 900 (1908); 147 Pa. 481, 23 A. 769 (1892); 121 Pa. 118, 15 A. 473 (1888); 70 Pa. 221 (1871) 37 Pa. 371 (1860).

entertain appeals which are from an interlocutory administrative order⁵⁸ or not properly pursued.⁵⁴

These instances of judicial tolerance and cooperation could be considerably multiplied⁵⁶ and supplemented with further cases proving that this tolerance has not drifted into the vice of absolute *laissez-faire*.⁵⁶ It would seem, therefore, that Pennsylvania's legislature has left its judiciary ready and able to play their role in the administrative field; and its judges have shown themselves properly willing to do so.

4—*Quasi-legislative Functions*

Just as it is of crucial importance that the General Assembly shall not transgress the bounds prescribed for it in the Constitution,⁵⁷ and just as the courts are occasionally required to declare Acts of Assembly unconstitutional, so must it be made certain that administrative bodies do not exceed the authority which has been delegated to them, and so must the courts perform an analogous task in this field as well. Pennsylvania's judiciary has discharged this duty with firmness, but moderation. They have said that agency authority running contrary to common law is to be strictly construed;⁵⁸ that an agency may not exceed its statutory authority;⁵⁹ and that administrative rules will be stricken down if they are oppressive, rather than properly regulatory.⁶⁰ On the other hand, it has been held that where the statute creating an agency is sufficiently broadly worded, administrative authority will be extended by implication to cover new conditions not in the contemplation of the legislature when the statute was

⁵⁸ See 364 Pa. 167, 29 A.2d 483 (1943); 271 Pa. 39, 114 A. 642 (1921); 268 Pa. 235, 110 A. 467 (1920).

⁵⁴ 349 Pa. 450, 32 A.2d 714, (1944).

⁵⁶ For example, it has been held on numerous occasions that, where an appeal from a taxing agency takes the form of a trial *de novo*, introduction of the record supporting the agency's order makes out a *prima facie* case for the validity of that order, 293 Pa. 186, 142 A. 134 (1928); 271 Pa. 225, 114 A. 774 (1921); 225 Pa. 272, 74 A. 65 (1909). Moreover, a board's decision has repeatedly been held to be entitled to "great weight" on appeal. Here, again authorities are so numerous that only a few of the most recent are cited: 361 Pa. 231, 64 A.2d 769 (1949); 360 Pa. 638, 63 A.2d 349 (1948); 356 Pa. 577, 52 A.2d 568 (1947); 354 Pa. 266, 47 A.2d 251 (1946); 352 Pa. 311, 42 A.2d 558 (1945).

⁵⁶ Since, for example, in tax cases the *prima facie* case made out by introduction of board records is only this, and can be rebutted by proper evidence 250 Pa. 515, 95 A. 712 (1915); 236 Pa. 97, 84 A. 761 (1912); 229 Pa. 460, 79 A. 109 (1911). Moreover, even where the courts are limited to review by way of certiorari only, they will, as discussed above, still consider and decide basic questions of law.

⁵⁷ See especially Articles II, III, X XI, XII, XIII, XV, XVI, and XVII, as to matters of administrative law.

⁵⁸ 347 Pa. 130, 31 A.2d 537 (1943); 277 Pa. 472, 121 A. 488 (1923), later opinion in 280 Pa. 79, 124 A. 343 (1924).

⁵⁹ For variations on this theme, see 362 Pa. 438, 65 A.2d—(1949); 361 Pa. 647, 65 A.2d (1949); 359 Pa. 357, 59 A.2d 301 (1948); 355 Pa. 637, 50 A.2d 684 (1947); 352 Pa. 504, 43 A.2d 229 (1945); 154 Sup. 419, 36 A.2d 185; 352 Pa. 204, 42 A.2d 596 (1945); 351 Pa. 146, 40 A.2d 489 (1945); 346 Pa. 555, 31 A.2d 530, certiorari denied 320 U.S. 757, 88 L.Ed. 451, 64 S. Ct. 64 (1943).

⁶⁰ 336 Pa. 310, 9 A.2d 621 (1939).

enacted;⁶¹ and that the courts should not interfere with acts, orders, rules or regulations within the precise terms or clear implications⁶² of the statute creating an agency.

A second essential of proper conduct by a legislature is that its enactments be made after due hearing and with adequate publicity;⁶³ and similar standards should be imposed on administrative bodies in their quasi-legislative capacity.⁶⁴ Unfortunately, this *desideratum* has been only partially accomplished in Pennsylvania. Prior to the enactment of the Administrative Agency Law,⁶⁵ there was no general practice of having public hearings before adopting administrative regulations;⁶⁶ and that law does not make such a practice mandatory.⁶⁷ Similarly, while that law originally required such regulations to be published before becoming effective,⁶⁸ and to be cumulatively indexed thereafter,⁶⁹ these requirements have been modified⁷⁰ to the extent that administrative rules and regulations need only be "printed and made available, upon written request, within thirty days after . . . adoption." Here are two fertile fields for reform.⁷¹

In short, it would seem that in Pennsylvania the treatment of quasi-legislative activities is sound so far as concerns rules of what, by analogy to constitutionality of legislation, may be called "statutality" of administrative rules and regulations. Perfection still lies ahead in the field of quasi-legislative administrative procedure.

5—Quasi-judicial Functions

Here we reach one of the most intensely discussed fields of administrative activity. As we have said, the argument most often advanced for the use of administrative tribunals, rather than courts, is the need for specialized experts

⁶¹ As by construing "moving pictures" to include "television," 360 Pa. 269, 62 A.2d 53 (1948). This decision was nullified by the Act of May 2, 1949, No. 245.

⁶² 361 Pa. 543, 64 A.2d 659 (1949); 359 Pa. 347, 59 A.2d 166 (1948); 354 Pa. 458, 47 A.2d 665 (1946), further litigated in 360 Pa. 129, 61 A.2d 343 (1948), and mentioned in 97 U. OF PA. L. REV. 44, 272; 351 Pa. 139, 40 A.2d 404 (1945); 351 Pa. 108, 40 A.2d 399 (1944).

⁶³ Otherwise the axiom "*Ignoratio legis neminem excusat*" is mockery.

⁶⁴ See Greswald "*Government in Ignorance of the Law—A Plea for Better Publication of Executive Legislation*," 48 HAR. L. REV. 204 (1934).

⁶⁵ 1945, June 4, P.L. 1388.

⁶⁶ Joint State Government Commission, *Report to the General Assembly of the Commonwealth of Pennsylvania on Uniform Practice and Procedure before Departments, Boards and Commissions of the Commonwealth* (1943).

⁶⁷ In spite of a recommendation by the Joint State Government Commission to this effect, *op cit supra* note 66 at 16, 17.

⁶⁸ 1945, June 4, P.L. 1388, section 21.

⁶⁹ The "Pennsylvania Register Act", 1945, June 4, P. L. 1392, Section 4.

⁷⁰ By 1947, July 7, P.L. 1367.

⁷¹ See Byse, *Administrative Procedure Reform in Pennsylvania*, 97 U. OF PA. L. REV. 22 at 32 to 37, and the *Report of the Section on Administrative Law*, PA. BAR ASSN. Q. (June 1949).

as judges, on the one hand, and for speed and flexibility on the other.⁷² The former argument has met with little denial; but it has properly and often been said⁷³ that in the quest for speed and flexibility there is a tendency to brush aside the traditional requirements of a "fair trial".

Pennsylvania would seem to be approaching a sensible solution of this delicate problem. In the "Adjudication Procedure" section of the Administrative Agency Law⁷⁴ there is set out with equal clarity, and with greater brevity than that of the Federal Administrative Procedure Act⁷⁵ and the model Uniform State Administrative Law Bill,⁷⁶ appropriate standards as to:—notice; hearings; record; rules of evidence; examination and cross-examination; briefs and arguments; adjudications and service thereof and procedural regulations. The Pennsylvania Act is subject to some criticism for incompleteness⁷⁷ in failing to contain the following provisions found in one or both of the Federal and Model State Bills:—a prohibition against the same administrative official acting both as investigator or prosecutor and as judge;⁷⁸ a limitation on the type of sanction which an agency may employ;⁷⁹ a prohibition against the use at administrative hearings of evidence not offered of record and made subject to cross-examination;⁸⁰ a provision for intermediate reports or proposed decision;⁸¹ and authority for declaratory orders.⁸² The deficiencies may not be as serious as might, at first, appear. It has not been argued that Pennsylvania administrators often play the dual role of prosecutor-judge; the penalties which an agency may impose are normally specified in the act creating it;⁸³ the courts have already supplied the lack of detailed statutory rules as to administrative fair trials, including

⁷² Phillips, J., *op. cit. supra*, note 8; President Roosevelt, in vetoing the Logan-Walter Bill (27 AMERICAN BAR ASSOCIATION JOURNAL 52, 1941), "Conventional processes of the court are not adapted to handling controversies in the mass;" Hon. John J. Parker, *Improving the Administration of Justice*, 27 *idem* 71 (1941); Bell, *Let Me Find the Facts*, 26 *idem* 552 (1940), "Defenders of the process plead the necessity for expedited governmental machinery and claim for it great advantages in expertness."

⁷³ See, for example, the following articles in the AMERICAN BAR ASSOCIATION JOURNAL: volume 19, page 141 (1933); volume 20 page 612 (1934); volume 21, page 376 (1935); volume 23, pages 92, 95 (1936); volume 23, page 186 (1937); volume 24, pages 274, 279, 287 (a symposium), 630 (Ross Essay), 897 (1938); volume 25, pages 453, 770, 883, 940 (selected Ross Essay entries) (1939); volume 26, page 552, *supra* (1940); volume 27, beginning at pages 133 and 207 (a symposium) (1941); volume 29 pages 681, 702 (1943); volume 30, pages 3, 121 (1944); volume 32, pages 827, 863 (1946); volume 33, page 1191 (1947).

⁷⁴ 1945, June 4, P.L. 1388—sections 31 to 35, inclusive.

⁷⁵ 60 Stat. 237, 5 U.S.C.A., sections 1001-1011 (Supplement of 1946).

⁷⁶ See National Conference of Commissioners on Uniform State Laws, Model State Administrative Procedure Act with Prefatory Note (1946).

⁷⁷ See Byse, *op. cit. supra* note 71 at 26 and 27.

⁷⁸ Compare Section 1004(c) of the Federal Administrative Procedure Act, *supra* note 66.

⁷⁹ Compare Section 1008 *idem*.

⁸⁰ Compare Section 1006(c) *idem*.

⁸¹ Compare Section 1007 *idem*.

⁸² Compare Section 1004(d) *idem*.

⁸³ For example, in the case of the Insurance Commissioner, see 1921, May 17, P.L. 789, as amended by 1931, June 22, P.L. 616, "The Insurance Commissioner may, in his discretion, pursue any one or more of the following courses of action . . ."

handling of evidence;⁸⁴ and there is no prohibition in the Administrative Agency Law⁸⁵ against use of intermediate reports, proposed decisions or declaratory orders.

6—Appropriate Remedies for Administrative Abuses

We have already discussed above⁸⁶ the Pennsylvania doctrines with regard to the availability of the direct remedy of appeal by parties aggrieved by administrative action. It remains to consider briefly the related rules as to the availability of collateral and extraordinary remedies. They would appear to be ample.

There is both statutory and judicial authority for use of the courts' equitable powers to enjoin a wrongful administrative act,⁸⁷ and for issuance of writs of mandamus to compel performance of ministerial acts⁸⁸ which have been wrongfully refused.⁸⁹ Similarly, quo warranto can be employed by interested and affected parties to question the title of administrators to their office,⁹⁰ and writs of prohibition may, in proper circumstances, issue to restrain them.⁹¹

However, here as before, we find each such remedy hedged about by appropriate restrictions. As we have seen, appeals will only be permitted after exhaustion of administrative remedies.⁹² Moreover bills in equity cannot be employed to restrain the execution of a specifically authorized act, nor the

⁸⁴ See 355 Pa. 521, 50 A.2d 301 (1947), in which the Supreme Court adopts the opinion of the Superior Court, 158 Sup. 638, 46 A.2d 26 (1946) to the effect that "In hearings before the [public utility] commission all parties must be apprised of the evidence submitted, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal according to well understood rules. In no other way can a party maintain its rights, or make a defense, or test the sufficiency of the facts to support the finding . . . and while the commission is an administrative body, and even where it acts in [only] a quasi-judicial capacity . . . the more imperative it is to preserve the essential rules of evidence . . ." Compare with 359 Pa. 402, 59 A.2d 121 (1948) discussed in 97 U. OF PA. L. REV. 77; and 157 Sup. 252, 42 A.2d 322; 353 Pa. 49, 44 A.2d 250 (1945). Note also discussion of "due process," *supra*.

⁸⁵ 1945, June 4, P.L. 1388.

⁸⁶ In section 3 hereof, pages 4 to 6, above.

⁸⁷ See 359 Pa. 213, 58 A.2d 574 (1948); 340 Pa. 382, 17 A.2d 206 (1940); 331 Pa. 193, 200 A. 864 (1938); 276 Pa. 24, 119 A. 727 (1923); 249 Pa. 253, 94 A. 1091 (1915); 248 Pa. 559, 94 A. 248 (1915); 241 Pa. 146, 88 A. 426 (1913); 237 Pa. 616, 85 A. 379 (1912); 234 Pa. 481, 83 A. 362; 218 Pa. 100, 66 A. 1121 (1907); 200 Pa. 629, 50 A. 198 (1901); 182 Pa. 251, 37 A. 853 (1897). For example of statutes, see 1913, July 26, P.L. 1374, Art. VI, sec. 31, as to injunctions against the Public Utilities Commission, and 1933 May 15, P.L. 565, Art. VI, sec. 605 as to injunctions against the Secretary of Banking.

⁸⁸ Most recent are: 361 Pa. 607, 65 A.2d 402 (1949); 353 Pa. 142, 44 A.2d 575 (1945); 353 Pa. 79, 44 A.2d 267 (1945); 347 Pa. 608, 32 A.2d 874 (1943) (discussing exclusive jurisdiction of the courts of Dauphin County); 343 Pa. 573, 23 A.2d 737 (1942).

⁸⁹ Without such refusal, this extraordinary remedy will not be granted: 312 Pa. 67, 167 A. 779 (1933); 1 S. & R. 472 (1815).

⁹⁰ A typical recent case upholding issuance of the writ is 359 Pa. 304, 59 A.2d 169 (1948). As to its exclusion of other remedies, see 356 Pa. 573, 52 A.2d 653 (1947). The statutory authority for its use is found in the Act of 1836, June 14, P.L. 621, and further decisions thereunder are compiled in 12 PURDON'S STATUTES (ANNOTATED) 2021 to 2043. As to restrictions on its use by private relators, see 355 Pa. 493, 50 A.2d 496.

⁹¹ For a recent and complete discussion of the use of the writ against "quasi-judicial tribunals", see 360 Pa. 94, 61 A.2d 426 (1948) and cases therein cited. Compare with 360 Pa. 103, 61 A.2d 430 (1948), in which there is discussed the use of the writ against subordinate courts.

⁹² See note 52.

exercise of properly conferred discretion.⁹⁸ Similarly, it has been held that mandamus will be refused where there is an adequate conventional remedy,⁹⁴ and that, as we have said, a writ of prohibition cannot take the place of a conventional appeal.⁹⁵

Recognition of the Principles

It is not enough that one may be able, after considerable research, to find adequate definitions of the foregoing principles among the Constitution, statutes and decisions. If these principles are to have the necessary validity of working rules, they must be generally recognized and understood by practicing lawyers who use them as tools of their profession.

A fair index of the degree to which the bar recognizes and uses a given body of law is the kind and number of codes, digests, annotations and texts to be found in the field concerned. Judged by this criterion, Pennsylvania, in common with her sister States, is approaching but has not yet reached the dawn of an understanding of administrative law as a specialized field.

The Commonwealth has had a substantive Administrative Code for over two decades;⁹⁶ but inspection of it shows that it contains only the barest framework of the administrative machinery. The powers and duties of the various departments and their subsidiaries are to be found in provisions scattered throughout the seventy-seven titles of Purdon's Statutes.⁹⁷ On the procedural side, the Administrative Agency Law⁹⁸ is just over three years old and is not yet universal in its application.⁹⁹

None of the principal Pennsylvania digests have as yet followed the recent lead of the National Reporter system in devoting a special topic to "Administrative Law".¹⁰⁰ One must still pick and hunt among such particular topics as "Workmen's Compensation" or "Public Utilities" on the substantive side, and "Appeals" or "Mandamus" on the procedural.¹⁰¹

Annotations are on a corresponding level. "Purdon's Statutes (Annotated)"¹⁰² probably contain all the available decisions on relevant acts, but its arrangement

⁹⁸ 360 Pa. 29, 61 A.2d 133 (1948); 341 Pa. 568, 20 A.2d 209 (1941); 301 Pa. 358, 150 A. 102 (1930); 282 Pa. 387, 127 A. 836 (1925); 175 Pa. 512, 34 A. 916 (1896); 164 Pa. 477, 30 A. 383 (1894); 158 Pa. 272, 27 A. 945 (1893). See also, note 51.

⁹⁴ 239 Pa. 468, 86 A. 1019 (1913).

⁹⁵ See note 91.

⁹⁶ 1923, June 7, P.L. 498, extensively revised in 1929, April 9, P. L. 177.

⁹⁷ For example, provisions relative to the Department of Welfare are to be found in Titles 10 (Charities and Welfare), 61 (Penal and Correctional Institutions) and 62 (Poor Districts).

⁹⁸ 1945, P.L. 1388, *supra*.

⁹⁹ Note particularly the exemption contained in section 51, and see discussion thereon in Byse, *op cit. supra* at 44. Also note evidence of a tendency to extend the laws piecemeal, as in the case of the 1947 insurance laws discussed *infra*, note 121.

¹⁰⁰ FIFTH DECENNIAL DIGEST, Volume 1, pages 639-956 (1948).

¹⁰¹ See similar comments as to Federal material by Hon. Justin Miller in *A Judge Looks at Judicial Review of Administrative Determinations*, 26 AMERICAN BAR ASSOCIATION JOURNAL 5 (1940).

¹⁰² Published by the West Publishing Company, St. Paul, Minnesota.

has the same flaws as that of the statutes themselves. The material must still be taken piecemeal from a wide range of special topics and then synthesized.

The same remarks are to be made as to textbooks. The catalogue of the Philadelphia Bar Association (which is as complete as any in the State) lists but two books on the general subject of *Pennsylvania Administrative Law*.¹⁰³ The selection of texts devoted to Pennsylvania law on the specialized topics we have mentioned is not much greater.¹⁰⁴

However, these conditions are easily understandable. Prior to the beginning of the "New Deal" in Washington, administrative law was in a stage of tentative development roughly analogous to that in which "trespass on the case", equity, and admiralty found themselves in their early days.¹⁰⁵ As recently as twenty years ago there were those in high authority¹⁰⁶ and in great numbers who viewed the whole development of administrative law as a vicious tendency, and even today snarling cries of "Bureaucracy" are heard.¹⁰⁷ It has only been two years since an intensive campaign by the American Bar Association¹⁰⁸ produced the Federal Administrative Procedure Act.¹⁰⁹ It took an equally vigorous struggle by the Pennsylvania Bar Association¹¹⁰ to achieve the Commonwealth's counterpart of this law.¹¹¹

Straws in the Wind

At the present time it is safe to say that administrative techniques have fully proved their worth, and are no longer to be viewed as "alien intruders"¹¹² into our governmental procedures. As Chief Justice Vanderbilt of the Supreme

¹⁰³ Schnader, *ADMINISTRATIVE CODE OF THE COMMONWEALTH OF PENNSYLVANIA* (1927); Hannestad, *ditto* (1935).

¹⁰⁴ Catalogued under the heading of "Pennsylvania Law", one finds among the works less than twenty years old, only the following: Rules and Regulations of the Bureau of Employment and Unemployment Compensation (1942), of the Department of Agriculture (1928), of the Department of Internal Affairs (1928), of the Department of Industry (1931), and the Department of Welfare (1934); Digests of the Liquor Control System (1937), the Milk Control Law (1938) and the Anthracite and Bituminous Mining Laws (1939); ADE HOW PENNSYLVANIA IS GOVERNED (1939); Segal *PENNSYLVANIA BANKING AND BUILDING AND LOAN CODES, ANNOTATED* (1939). These were, of course, brought down to date in the *PENNSYLVANIA REGISTER*, previously discussed.

¹⁰⁵ See comments of Vanderbilt, C. J., in *Administrative Procedures Shall Rules before Agencies be Uniform*, 34 *AMERICAN BAR ASSOCIATION JOURNAL* 896 (1948).

¹⁰⁶ Including the Lord Chief Justice of England, whose book *THE NEW DESPOTISM* is quoted at length by Chief Justice Vanderbilt in *The Place of Administrative Tribunals in Our Legal System*, 24 *AMERICAN BAR ASSOCIATION JOURNAL* 267 (1938).

¹⁰⁷ See McCarran, *Regulatory Government: Its 'Unwritten and Irrational Constitution'*, 34 *AMERICAN BAR ASSOCIATION JOURNAL* 1005 (1948).

¹⁰⁸ For a history of this struggle, see the following articles and editorials appearing in the *REPORTS OF THE AMERICAN BAR ASSOCIATION*:— volume 68, page 249 (1943); volume 69, pages 149, 271, 438 (1944); volume 70, pages 127, 128, 270, 272 (1945); volume 71, page 213 (1946).

¹⁰⁹ June 11, 1946, chapter 324, 60 Stat. 237, 5 U.S.C.A. 1001 et seq., and amendments.

¹¹⁰ See *PA. BAR ASSN. REP.* as follows: volume 44, page 134 (1938); volume 45, pages 344-419 (1939); volume 46, page 248 (1940); volume 48, page 239 (1942); volume 49, page 170 (1943); volume 52, pages 144, 179, 181 (1946); volume 53, page 145. Also see *Report of the Section on Administrative Law*, 19 *PA. BAR ASSN. Q.*, 386 (1948).

¹¹¹ 1945, June 4, P.L. 1388, *supra*.

¹¹² Vanderbilt, *op. cit. supra*, note 105.

Court of New Jersey has recently said,¹¹³ it is now recognized that "Administrative law has been rightly called the outstanding legal development of the twentieth century" and what is now needed is for it "to be fully absorbed into the body of our legal institutions."

It is heartening to note that the Chief Justice is backed in his views by such high authority in the Federal field as the Chairman of the United States Senate Committee on the Judiciary, who addressed to the 1948 Annual Meeting of the American Bar Association a strong plea for "Further Improvements in (Federal) Agency Procedure".¹¹⁴ It is equally encouraging to note the degree to which Pennsylvania has most recently shown its awareness of this need for orderly development and integration of sound principles of administrative law in the State, as well as the Federal, field.

In 1945 Congress, by Public Law 15 of its 79th Session,¹¹⁵ placed before every State in the Union one of the broadest and most fundamental questions of administrative law, "What is adequate regulation?".¹¹⁶ It accompanied this question with a most forceful stimulus to the discovery of a correct answer when it further provided that, in the absence of such regulation, the Federal Anti-Trust Laws should apply to the business of insurance.¹¹⁷

Pennsylvania's reply to this challenge is illustrative of the essentials to the orderly and correct development of administrative law in any jurisdiction. Full use was made of available time¹¹⁸ for study of the particular problem in Pennsylvania and of the responses made in other jurisdictions,¹¹⁹ as well as the so-called Model Bills¹²⁰ prepared for nation-wide use by representatives of the affected industry. Well in advance of the last available session of the General Assembly a legislative drafting committee was formed, composed of representatives of the public and of all segments of the industry in Pennsylvania. This committee, after consultation with representatives of the Departments of Insurance and

¹¹³ *Idem*.

¹¹⁴ 34 AMERICAN BAR ASSOCIATION JOURNAL 877 (1948).

¹¹⁵ Chapter 20, 1st Session, 59 Statutes 34; 15 U.S.C. Section 1011-1015.

¹¹⁶ Since Section 2(b) of the Act speaks of the business being "regulated by state law," and it is clear that these terms must be defined more fully. For a discussion of this point, see "*Fourth and Fifth Reports of Sub-Committee of Lawyers to the Committee on Laws of the National Board of Fire Underwriters . . .*" (1946) at pages 4-9.

¹¹⁷ Section 2(b) of P.L. 15, cited in note 115, above.

¹¹⁸ Section 3(b) *idem*, as amended by July 25, 1947, chapter 326, 61 Statutes 448, suspended the operation of the Federal Anti-Trust Laws until June 30, 1948.

¹¹⁹ See Ely, *State Regulation of Fire Insurance Rates*, 95 U. OF PA. L. REV. 59 (1946), *State Rating and Related Laws*, 1947, INSURANCE LAW JOURNAL, No. 297, page 867 (1947).

¹²⁰ Discussed at length in *The Case for the All Industry Bill*, published by United States Fidelity and Guaranty Company of Baltimore (1946). See also the series of four booklets *Insurance as Interstate Commerce* published in 1946, 1947, 1948 and 1949 by the Insurance Section of the American Bar Association.

Justice, drafted a series of bills which covered all phases of the problem¹²¹ and which dovetailed into existing legislation on the subject.¹²² As a result of this preliminary effort, the bills passed both Houses without opposition. They are at present headed for court interpretation.¹²³

The two principal Acts in this program, the Fire and Casualty Insurance Rating Laws,¹²⁴ show clearly the merits of having already developed in the Commonwealth an adequate administrative philosophy. There was already in existence a governmental department operating in the field in question.¹²⁵ All that was needed was to prescribe new standards of conduct to be enforced¹²⁶ and to give that department necessary authority to enforce them.¹²⁷ So far as protecting the rights of parties affected, the pre-existence of the Administrative Agency Law made it possible merely to incorporate its provisions by reference.¹²⁸

Conclusions

Throughout its history, Pennsylvania has made full use of administrative, as well as legislative and judicial, techniques of government. As a result, there is in this Commonwealth a considerable body of well established "administrative law". Its volume is greater than is generally realized. While there is debate as to some of its peripheral developments, its main body seems sound and sensible. The text and digest material in the field is at present scanty and lacking in organization.

For the future, one can predict that Pennsylvania Administrative Law will increase in quantity and improve in quality.

¹²¹ 1947, June 11, P.L. 551—regulating rates and cooperative activities in fire and marine insurance; 1947, June 11, P.L. 538—providing similar regulation for casualty insurance; 1947, June 5, P.L. 443, being a counterpart on the State level of the Federal Clayton Act; 1947, June 5, P.L. 456—legalizing the payment of commissions to insurance broker and agents. Cf. Federal Robinson-Patman Act; 1947, June 5, P.L. 445—"The Insurance Unfair Practices Act", analogous to the Federal Trade Commission Act; compare the subject matter of these acts with Section 3(a) of Public Law 15, 79th Congress, cited *supra* note 105.

¹²² In addition to the "repealer" sections of the Acts cited in note 121, see 1947, June 5, P.L. 439 and 1947, June 10, P.L. 495, amending existing laws to bring them into conformity with the new regulation.

¹²³ There is presently pending before the Court of Common Pleas of Dauphin County an appeal from the action of the Insurance Commissioner in failing to disapprove a deviation filed under the fire insurance rating law.

¹²⁴ 1947, June 11, P.L. 551, and 1947, June 11, P.L. 538, above.

¹²⁵ The Insurance Department, established by 1921, May 17, P.L. 789.

¹²⁶ In 1947 P.L. 551 and 1947 P.L. 538, that "Rates shall not be excessive, inadequate or unfairly discriminatory;" in 1947 P.L. 443 that acquisition of stock of one insurance company by another shall not "substantially lessen competition or tend to create a monopoly;" in 1947 P.L. 456 that commission shall be "for, or an account of, the solicitation or negotiation of contracts for insurance;" and in 1947 P.L. 445 that "methods, acts and practices in the insurance business shall not be unfair or deceptive".

¹²⁷ As by disapproval of rates, 1947 P.L. 515, section 5, and 1947 P.L. 538, section 5; or by "cease and desist" orders, 1947 P.L. 443, section 1 (337.3) and 1947 P.L. 445, section 7.

¹²⁸ See 1947 P.L. 551, section 16(c); 1947 P.L. 538, section 17(c); 1947 P.L. 443, section 1 (337.3); 1947 P.L. 445, section 8.

The complexity of political, economic and social life, which called it into being, shows no signs of disappearing. Hence, its continued growth is assured. Increasing public and official interest in it, stimulated by contests such as the present, should guarantee that this growth will be along proper lines.