

THE ADMINISTRATIVE PROCESS. By James M. Landis. New Haven: Yale University Press, 1938. Pp. 160.

In Dean Landis's book a happy combination of scholarship and administrative experience brings forth fruit that is certain to contribute much to subsequent thought upon administrative law. The work can most appropriately be termed a commentary upon the administrative process rather than a complete analysis of the subject—as its slender bulk and the fact that it reproduces a series of four Storrs lectures at Yale University would in themselves indicate. Accompanying its illuminating sidelights and fertile suggestions, however, are an acute analysis of the administrative process and classification of administrative agencies which are equally as valuable as the knowledge of some of the specific workings of administration supplied by the pages of the book.

Dean Landis is not concerned with the entire governmental administrative process, even in its bearing upon private interests, but rather with the operation in the economic sphere of regulatory agencies, whose present-day importance is so outstanding. The methods of these agencies find their analogues in the management of the business enterprises they assist in controlling, rather than in the more traditional processes of government. Their powers are not mere extensions of the earlier executive power, and they necessarily combine functions which, under the separation at least theoretically prevailing in the older departments, would be assigned to different agencies. That fact need occasion no surprise and no alarm. The rise of industrialism and the rise of democracy simply have cast new duties upon government, as it has sought to shape economic activity to social ends, which the former governmental methods were inadequate to perform. Administrative agencies are, if you like, a fourth branch of the government, established by legislative action to cope with certain types of problems. The usual constitutional discussion in regard to their functions is largely irrelevant to an appraisal of their methods. Dean Landis devotes himself to a discussion of those methods, of the terms in which legislatures can most wisely confer discretionary powers, of the organization of administrative agencies, of the sanctions and controls which implement and check administrative action, and of the relation of the judiciary to administrative policies.

It is impossible within the limits of a book review even to outline the significant points which Dean Landis makes. His classification of administrative agencies brings him to the "more significant" ones, which "have as the central theme of their activity either the orderly supervision of a specific industry or, as in the case of the Federal Trade Commission, an extension of a particular branch of the police work of the general government."¹ It is clear that the need for expertness in regulation, equally with the flexibility of the powers that might be conferred, led to the creation of most of them; and the same need leads naturally to the creation of more such agencies, with increased specialization of tasks, as time goes on. Dean Landis pays his respects to the type of *a priori* reasoning which seeks by

1. P. 23.

the nominal subjection of independent agencies to departmental control to introduce centralized responsibility for their functioning. As he points out, such departmentalization leads rather to a diminution of responsibility; for the official nominally in control cannot possibly, because of his multitudinous duties, make that control effective; while the really active bureau chief lacks an official status, equivalent to that of the members of the independent commissions, which would make him truly answerable for the policies of his bureau.²

In Dean Landis's discussion of the bestowal of discretionary administrative powers or, as he puts it, the relation of the administrative and the legislative in the framing of policies, his thought is especially enriched by his experience on the Federal Trade Commission and the Securities and Exchange Commission. To him the judicially-developed principle "that the grant of the power to adjudicate must be bound to a stated objective toward which the determination of claims must tend"³ takes on greater precision as he considers the various types of determinations which the administrative is called upon to make. In reaching governmental decisions there must be "conscious selection among available and competing postulates. When those postulates have so enlisted the loyalties and faiths of classes of people, the choice, to have that finality and moral sanction necessary for enforcement, must, as a practical matter, be made according to a method which resolves it as if it were one of power rather than one of judgment."⁴ It is then that the legislature should determine the policy—not so much to satisfy the requirements of the Constitution as to save administration from internal conflict and from clashes with legislative and executive agencies. Nor does the breadth of the language in which necessarily the legislature must express its policy destroy its value as a guide to administration—to that fact, Dean Landis testifies from first-hand knowledge.⁵ Concrete experience contributes also to his differentiation of the situations that call for policy determination in the form of general regulations from those in which it is better to prick out policies from case to case.⁶

In dealing with sanctions and controls⁷ Dean Landis again takes up in realistic fashion the problems that arise. The far-famed "prosecutor-judge" combination under the aegis of administrative authorities comes in for its share of attention. It has arisen because of the inadequacies of the judicial process to meet new demands. There are numerous tendencies and possibilities, such as division of labor within agencies and the professionalization of their personnel, which suggests means of obviating the abuses that may spring from the combination, short of a complete separation of the two functions under different auspices. If such a separation were effected, the actual problem would not be solved; for it is the "prosecution" in itself,

2. P. 29.

3. P. 50.

4. P. 59.

5. Pp. 67-69.

6. Pp. 80-87.

7. Lecture III.

rather than the final decision, which has force for good or for ill in the great majority of cases.⁸

The prime need, moreover, is for adequate administrative powers:

To essay what we cannot do is often worse than to do nothing, for failure destroys too easily the dream of better ways of living. So much in the way of hope for the regulation of enterprise, for the realization of claims to a better livelihood has, since the turn of the century, been made to rest upon the administrative process. To arm it with the means to effectuate those hopes is but to preserve the current of American living. To leave it powerless to achieve its purposes is to imperil too greatly the things that we have learned to hold dear.⁹

In dealing with judicial review Dean Landis follows Mr. Justice Brandeis in attributing to the expertness of the administration the principal justification for a considerable degree of administrative finality. Conversely, those questions of "law" which should be subject to judicial review ought in reality to be those "that lawyers are best equipped to decide."¹⁰ If the matter is approached from that standpoint, the answers to specific issues will be framed "in terms of an appreciation of the limitations and abilities of men, rather than in terms of political dogma or righteous abstractions."

Dean Landis's book clearly takes its place as an outstanding member of that all-too-sparse line of realistic essays in the field of administrative law which, while they consider the subject as a whole, do not center upon constitutional abstractions. Berle, whose thought Dean Landis to a considerable extent parallels, made one of the earliest contributions to this series.¹¹

Even if one wished to, it would be difficult to pick flaws in this newest work. One may rightly suggest, however, that there are important problems of administrative law outside the field upon which Dean Landis chooses to center his attention. The methods employed in these other areas (taxation, regulation in the interest of health and morals, certain "service" functions of government, and local regulation generally) go farther back historically than the major forms of economic regulation. Study of them may reveal that even the older processes of government have not in fact been subjected to a three-fold separation of functions and hence that the constitutional battles in administrative law, which remain to be fought to some extent on the basis of tradition, may be won even in terms of the work of the Fathers.

The style of Dean Landis's book abounds in figures of speech and in places makes difficult reading. The substance, however, is pure metal and worth digging for. May it enter largely into the structure of future American thought upon administrative law.

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8. P. 106 ff.

9. P. 122.

10. P. 152.

11. *The Expansion of American Administrative Law* (1917) 30 Harv. L. Rev. 430, (1938) 4 *Select Essays in Constitutional Law* 120.

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