

# Washington University Law Review

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Volume 25 | Issue 3

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January 1940

## Conclusion

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### Recommended Citation

Ralph F. Fuchs, *Conclusion*, 25 WASH. U. L. Q. 459 (1940).

Available at: [https://openscholarship.wustl.edu/law\\_lawreview/vol25/iss3/20](https://openscholarship.wustl.edu/law_lawreview/vol25/iss3/20)

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if we are displeased with what happens, is with the legislative body that set up by statute these artificial tribunals and gave them a new kind of jurisdiction, which is outside the tradition of common law and equity.

## CONCLUSION

RALPH F. FUCHS

I am privileged to say for the faculty how much we appreciate the interest which the members of the Bar and others have shown in coming here and listening for so long to these programs and the equal appreciation that we feel toward those who have come from long distances to make this program what it has been. To all who have participated we extend our very sincere thanks.

Our only disappointment in regard to this symposium has been the fact that the audience has not participated—last night and this morning through no fault of its own; this afternoon perhaps from a feeling that a great deal has been said and maybe there isn't any use saying much more. I see people here that I know have thoughts, even vigorous thoughts, upon this topic, which I wish very much could be expressed. Perhaps we can create an occasion for that later on, especially if, as we still hope, it turns out to be possible to get Professor Patterson to make a trip out here later in the season and address a meeting which possibly the St. Louis Bar Association will sponsor with us.

I am going to take a few minutes now to bring together a few thoughts it may be worth while to reiterate in an organized fashion regarding this whole subject.

The first is that there is a great deal of administrative rule-making and adjudicating that we haven't talked about at all in these three sessions that we have had. There is, for instance, a great mass of petty licensing, some of which even the federal government has carried on through the Bureau of Marine Inspection and Navigation, the Secretary of Agriculture, and other officials, which bears in a very important way upon individuals in earning a livelihood and upon business enterprises of various sorts. We have said nothing about that because we haven't had time. There is a great deal of administering of benefits carried on by the federal government and by other governmental units

that likewise we have said nothing about. The Bureau of Old Age Insurance is confronted now with the task of taking care of about a million applications a year for old age insurance payments. That is a field which has different requirements, perhaps, from those that we have been talking about. We have dealt largely with administrative processes as they affect economic interests of the weightier sort, those which traditionally have received at the hands of administrative agencies a somewhat more careful procedure than is possible in regard to these smaller matters that I have just mentioned. But in legislating with reference to administrative procedure generally, I think it is important that we not forget that there is this other area of administration which would likewise be affected by blanket legislation.

I think we have seen, from what has been said, that for all of this administrative regulation it is essential that there be large governmental organizations. The matters to be dealt with are so widespread in their scope and so various in their aspects that it takes a large regulatory organization to perform the tasks which the legislature wants to have performed. Moreover, that organization must embrace within itself technical expertness to a high degree. Consequently we have got to have cases dealt with not, as in court, by a single judge or a judge aided by a fact-finding jury, but by many individuals in a large organization who bring varying qualities to the work. And in the organization as a whole we have got to have the combination of prosecutor and judge, as the phrase has been put. Nobody has proposed in any concrete way that in an organization which carries on any of these regulatory tasks there be an actual divorce of responsibility for the various subsidiary functions by vesting them in entirely separate organizations.

Now that of course gives rise to procedural problems, as has been pointed out here so ably by Mr. Bikle and Mr. Gage and others. And the question of what to do about those procedural problems is perhaps the principal one we have had under discussion here. I should like to say in this connection that it is not really a necessary accompaniment of the combination of functions that there be bias in a bad sense on the part of administrators. There is a difference between personal commitment to the policy of a statute which one is endeavoring to administer

and a bias against a particular respondent. I don't think we would believe, any of us, that it was something against the capacity of a judge in criminal cases that he had in his heart the determination to see to it that the criminal law is effectively carried out so far as it lies within his power to accomplish that end. He might feel that way and still be entirely fair to a particular defendant who came before him. And I think the same thing can be true of the administrative officials, who may believe as ardently as you wish in carrying out the policy of an act and still be fair to particular respondents. The question as regards existing agencies in whom bias is charged is whether they believe, before they have heard the evidence, that particular respondents who come before them are guilty of violating the act.

But of course it is true that in the performance of a big regulatory job, in carrying on work which is inspired by a good deal of zeal oftentimes on the part of the administrative officials, there may arise unfairness; it certainly has arisen; and there are procedural safeguards necessary. I think I have suggested that you cannot set up independent judging tribunals, except rarely, as, for example, in the case of the Board of Tax Appeals. Mr. Feller pointed out last night how cumbersome and unworkable your procedure might become if you tried to do that. What, then, can you do?

Well, since you have to have a division of labor among subordinates within a large agency, you can vest a large part of the deciding function, if not the whole of it, in certain of those subordinates. You can accompany that delegation of authority, that division of labor, with procedures such as Mr. Sellers was outlining this morning, which endeavor to secure a fair presentation to the persons who have the matter to decide, of every question that comes up. You can endeavor to procure the best and the fairest personnel possible. And, finally, you can try to procure an administrative organization and a type of administrative management that will co-ordinate that organization and check up on the work that it does, that will produce the results that should be produced.

This last problem, of course, turns in part upon the kind of heads that these agencies have, whether it be the single head of a department or the several heads of a board or commission. Mr. Bikle suggested last night, quite rightly I think, that in some

instances commissions are better than single-headed agencies because you can get a better type of consideration of important matters at the hands of a commission, though that may not always be true.

If you have the right kind of heads of an organization, then the problem of co-ordination and checking and control becomes one of administrative management. And that is what we have been discussing here, to a considerable degree, this afternoon. One of the principal factors in the successful conduct of the Bureau of Internal Revenue consists of the proper division of labor and the proper co-ordination of the labor of those who have to do the work.

The personnel problem has been stressed at every session and by practically every speaker, and I think that this is extremely significant. It is significant not only because it is inherently important, but because it requires more thought and more action than the legal profession has thus far bestowed upon it. The personnel problem is one which lawyers have talked about but haven't done much about; but this development of administrative regulation calls for an enlargement of the interests of the Bar going beyond these purely procedural matters which we recognize as our own and extending to the personnel problem and to the problem of administrative management, which down to now we have left to reform organizations and to groups which do not have among them many lawyers, or certainly do not have them in their professional capacity.

Mr. Neuhoﬀ suggested this morning that the ultimate checks upon the operation of the administrative system are two in number. There is the procedural check, which includes judicial review, and I think we dealt with that adequately last night. Finally, there is the political check, and we cannot, I think, get away from that. In the last analysis, the way this whole system runs depends on what Congress does about it, and what Congress does about it depends on what the citizens as a whole do about it as a political matter. This problem of administrative justice is a big one. It has its political angles, which we are not primarily concerned with; but these tie in with the factor of personnel and with policy-making itself, that we have got to be cognizant of.