Washington University Law Review

Volume 13 | Issue 3

January 1928

Review of "Administrative Justice and the Supremacy of Law in the United States," By John Dickinson

Ralph F. Fuchs
Indiana University School of Law

For a course devoted to the law of common carriers, Professor Green has collated a very satisfying amount of case and statutory material.

CHARLES EDWARD CULLEN.

Washington University School of Law.

ADMINISTRATIVE JUSTICE AND THE SUPREMACY OF LAW IN THE UNITED STATES. By *John Dickinson*. (Harvard Studies in Administrative Law, vol. II.) Cambridge: Harvard University Press, 1927. Pp. xiii, 403.

It is difficult to prevent this review from becoming banal by reason of excessive praise, for Mr. Dickinson has accomplished his object superlatively well. What that object is, is stated in Mr. Dickinson's preface and in a general introduction to the series of which the present volume is a part, written by Professor Felix Frankfurter and published in Volume I, THE INSURANCE COMMISSIONER IN THE UNITED STATES, by Professor Edwin W. Patterson. Both Mr. Dickinson and Professor Frankfurter acknowledge the debt of all students of administrative law to Professor Freund and President Goodnow, the pioneers in the field. The purpose of the Harvard Studies in Administrative Law is to supplement the work of the pioneers by supplying a series of intensive examinations into the functioning of particular administrative agencies and of the courts in reviewing their determinations, as "a painful means of proving what the insight of a rare few has suspected or discerned" and as a basis for more accurate generalization later on. Hence Professor Patterson's volume. Mr. Dickinson's book is a sort of introduction to the entire series, which might perhaps better have appeared as Volume I. It enables the series to get under way with a tentative general view of its own—an up-to-date orientation, as it were, in a developing situation.

Mr. Dickinson starts out by giving the setting for the problem of administrative justice. It is, of course, the growing complexity of modern life, which has made it imperative for the executive branch of the government to do in a wide field what it has always done in a restricted area—that is, act upon its own motion for the purpose of forcing the individual (or the corporation) to perform or not to perform certain acts or to give up property. In thus broadening the scope of its action the executive department, or the administrative as it has come to be known in this connection, has been forced upon the attention of the courts and of the legal profession by the expanding scope of the police power. Consequently, for example, where once it was possible to conduct a barber shop about as one pleased, subject only to a possible suit for damages by one who had been demonstrably injured by unsanitary treatment, today one must have a license and one's premises are likely to be visited at any time by an inspector with apparently summary power to order things tidied up. So it is in connection with a multitude of matters, great and small.

The specifically legal problem, as is well known, to which this situation gives rise, is that of the extent to which the acts of public officials shall be subject to review in regular judicial proceedings; or, stated the other way, it is the problem of the extent to which the determinations of these officials shall be final. It is a problem which the courts have had to answer for themselves, aided occasionally by direction from the legislature; for there has been no power above them to dictate what they should do. The basic idea which they have had to work with, as Mr. Dickinson shows, is the old idea of the supremacy of law which Coke invoked in his contest with James I and which is at the bottom of the American Courts' power to review the constitutionality of legislation. In limiting for themselves the extent to which they will review administrative decisions, the courts have drawn the large distinction between questions of law

and questions of fact and have attempted to enumerate other classes of questions which they will or will not review after an administrative official or body has determined them. The classifications thus made form the subject matter of what has come to be known as administrative law.

But before the inquirer studies the problems of administrative law it would be well for him to examine the fundamental question of whether the idea of the supremacy of law has any value today; for the old notion that there really was a detailed metaphysical law brooding over the world has pretty largely been given up along with the belief that the courts are in any exclusive sense its mouthpieces. Instead we have democratic government building and applying law, with judges as officials more or less like the rest, and with all danger of royal despotism removed. Under these conditions it is a fair question to ask whether the courts really have anything to contribute which justifies the belief that they should in any case have the power to overturn what other officials, presumably acting in good faith, have done. Mr. Dickinson thinks they have, in the form of a law which transcends immediate situations. He recognizes, of course, that a mathematically certain rule of law has never been possible and is less possible now than ever before. There is much that must be left to discretion. But there can and must "be constructed a legal system which, although far from attaining the inexorable and absolute certainty once thought possible, yet introduces a degree of beneficial order into a world that would be much worse off without it." Necessarily such a system must be unified and, that being true, "the law ought to be applied by an agency whose main business is to know the law, rather than to enforce some part of it." Mr. Dickinson is obviously and properly thinking of the appellate courts rather than of the courts as a whole. He points out also that the courts should have the last word because they have been trained to adjudicate, that is, to determine the rights and duties of individuals, rather than to get things done, which is the primary function of administration.

When it comes to examining the specific doctrines of administrative law, Mr. Dickinson emerges with three suggestions among others: that it be definitely recognized that the field of governmental activity in which a given administrative agency is operating has and should have an influence upon the rules which shall govern court review of its determinations; that it be consciously realized that the distinction between law and fact is based upon considerations of policy which determine whether a legal rule is to be applied to a given situation or whether the solution is to be left to the discretion of officials as many questions in ordinary cases are left to the jury; and that the procedure for obtaining court review be made simple and definite so as to eliminate as far as possible miscarriages of justice resulting from procedural accidents. These conclusions seem thoroughly sound.

It is emphasized throughout the book that among the requisites of a successful system of court review is a real appreciation by the judges of the facts underlying the cases, which in the last analysis determine the policy that differentiates between "law" and "fact." Such a requisite involves a broadening of the training that makes the lawyers that make the judges. And so Mr. Dickinson in his last chapter launches into a discussion of pre-legal and law school curricula, suggesting changes which he believes may produce the desired results. Mr. Dickinson's suggestions are in line with progressive thought among legal educators; but they seem a bit out of place in the present book.

So bare a skeleton review as this cannot begin to do justice to the richness of the material with which Mr. Dickinson fills his pages or to the distinction which marks his literary style at many points. He introduces in all their concreteness numerous cases from many fields of judicial review of administrative action; he

draws upon economics, political science and philosophy to round out his argument; and he shows an appreciation throughout of the contemporary factors which render difficult the solution of the problems with which he deals. It is not too much to say that his book bears out the expectations that are aroused by the names of the scholars to whom he makes acknowledgment in his preface, and that it is well worthy the attention of a profession whose daily concern is the actualities of a striving, competing world.

RALPH F. FUCHS.
Washington University School of Law.