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Administrative Procedure in Britain

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One of the prime functions of judicial control of administrative determinations is to ensure that the "fundamentals of fair play" [1] have been preserved. Review to ensure compliance with these fundamentals is a branch of review based upon the doctrine of *ultra vires*,[2] for the observance of procedural essentials is necessary to the proper exercise of jurisdiction. This is well shown by the language of Lord Justice Bowen in a leading case on the exercise of judicial power by bodies other than the ordinary courts. The enabling Act merely prescribed the exercise of such power after "due inquiry": "The statute says nothing more, but in saying so much it certainly imports that the substantial elements of natural justice must be found to have been present at the inquiry. There must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at after he has had a full opportunity of being heard."[3]

The English courts, not having any constitutional requirements upon which to base their decisions, have tended to proceed somewhat slowly in holding the process of administrative decision to certain minimal standards. The earlier view, indeed, was that it was not for the courts to examine into the conduct of the

[1] The term is that of Mr. Justice Frankfurter in *Federal Communications Commission* v. *Pottsville Broadcasting Co.* (1940), 309 U.S. 134, at p. 143.
[2] See de Smith, The Limits of Judicial Review: Statutory Discretions and the Doctrine of Ultra Vires (1948), 11 Mod. L. Rev. 306.
[3] *Leeson* v. *General Council of Medical Education* (1889), 43 Ch. D. 366, at p. 383.

hearing at all, it being enough that the individual was afforded an opportunity to be heard. Thus, section 299 of the Public Health Act, 1875,[4] empowered the Local Government Board to enforce the performance of its duty to provide sufficient sewers by a defaulting local authority, where the Board was satisfied, after due inquiry, that the authority had been guilty of the alleged default. In *Reg.* v. *Staines Union*,[5] the defaulting authority, which was being proceeded against by way of *mandamus*, contended that the Board had not in fact held the "due inquiry" required by the Act, for the hearing officer had refused to allow certain material evidence tendered by the authority. The court, however, rejected this contention, Cave J. stating, "I have very grave doubt whether we have anything to do with the question of due inquiry. The Local Government Board — and not this court — had to decide. They had to be satisfied, and though no doubt, they were to be satisfied after 'due inquiry', these words did not mean that the Queen's Bench Division had to exercise its ordinary jurisdiction, or rather an appeal jurisdiction, on what was 'due inquiry'. . . . If it could be shown that there was no inquiry at all, there might be some ground for refusing this application for *mandamus*. But it was admitted that there had been an inquiry, and an inquiry which had satisfied the Local Government Board." [6]

In the light of the later English cases, this language would seem to go too far. The requirement of a hearing, which even Cave J. admitted the Local Government Board had to conform to, is of little value unless it proceeds with the "substance of a judicial proceeding" [7] — *i.e.*, in accordance with the principles of "natural justice". If, as Professor Laski has insisted, "Executive discretion is an impossible rule unless it is conceived of in terms of judicial standards",[8] the courts must clearly have the authority to ensure compliance with such standards. "The judiciary should have such power of scrutiny as will enable it to see that the rules adopted by the executive are such as are likely to result in justice." [9]

The need for judicial control over the conduct of administrative hearings becomes evident upon consideration of the method of decision of the English administrative process. Nor-

[4] 38 & 39 Vict., c. 55.
[5] (1893), 69 L.T.R. 714.
[6] *Idem*, at p. 716.
[7] Field J. in *Parsons* v. *Lakenheath School Board* (1889), 58 L.J.Q.B. 371, at p. 372.
[8] Laski, A Grammar of Politics (4th ed., 1938) 301.
[9] *Ibid.*

mally, the power to determine private rights and obligations[10] there is vested in the relevant Government Department as a whole instead of in a known, specialized tribunal. The decision rendered is an institutional one, in the sense that it is the decision of the Department as a whole rather than that of any single individual or tribunal. "It is the combined wisdom of the Department as a whole which is the tribunal."[11] Yet it is obvious that there must be some procedure by which the Departmental entity obtains the necessary information upon which to base its decision. In addition, the individuals affected must be given some opportunity of stating their case. They are given this opportunity through the device of the public local inquiry.

These public local inquiries, which in general afford the individual the only hearing available to him, have been described by Sir Cecil Carr as somewhat resembling coroners' inquests, "which, while reaching a definite or indefinite finding of fact, perform the useful social function of ventilating local opinions and averting any impression that vital matters have been ignored or suppressed".[12] They are very widespread in English administrative law. In a large number of cases, the relevant Minister is required to hold such inquiry by statute before taking action. The best known of these, since most of the cases have dealt with them, are the inquiries held in connection with housing schemes by the Minister of Health. Such inquiries must be held prior to the confirmation of a compulsory purchase or slum clearance order, if there are any objections to such order.[13] The tendency has been to extend the public local inquiry procedure as a statutory condition precedent to administrative decision, and the Housing Act practice has been adopted in many subsequent English statutes, where the Executive action has been similar in character.[14]

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[10] *I.e.*, the distinguishing feature of an administrative agency according to the United States Attorney General's Committee on Administrative Procedure, Report (1941) 7.

[11] Sir Maurice L. Gwyer, Committee on Ministers' Powers, Minutes of Evidence (1932) 30.

[12] Concerning English Administrative Law (1941) 111.

[13] Housing Act, 1930, 20 & 21 Geo. V, c. 39, 2nd Sched.; Housing Act, 1936, 26 Geo. V & 1 Ed. VIII, c. 51, 1st & 3rd Scheds.

[14] *E.g.* Local Government Act, 1933, 23 & 24 Geo. V, c. 51, s. 160; Water Supplies (Exceptional Shortage Orders) Act, 1934, 24 & 25 Geo. V, c. 20, 1st Sched.; Special Areas (Development and Improvement) Act, 1935, 25 & 26 Geo. V, c. 1, 3rd Sched.; Air Navigation Act, 1936, 26 Geo. V & 1 Ed. VIII, c. 44, 1st Sched.; Education Act, 1944, 7 & 8 Geo. VI, c. 31, s. 90; Distribution of Industry Act, 1945, 8 & 9 Geo. VI, c. 36, s. 12; Water Act, 1945, 8 & 9 Geo. VI, c. 42, 2nd Sched.; Statutory Orders (Special Procedure) Act, 1945, 9 & 10 Geo. VI, c. 18, 1st Sched.; Trunk Roads Act, 1946, 9 & 10 Geo. VI, c. 30, 2nd Sched.; Acquisition of Land (Authorisation Procedure)

These inquiries are conducted in the locality concerned by inspectors of the relevant Ministry. These inspectors, generally speaking, are not people who have had any legal training. They are experts in the particular line which is the subject of the inquiry — *e.g.* architects, civil engineers, surveyors, and the like[15] — rather than trained lawyers. Dr. Allen's characterization of the English housing inquiry inspector — "nor is he, as a rule, a very highly qualified person in any respect; he may be a retired surveyor, engineer or architect, or more often one who, not being very successful in his own profession, is content to accept the security and comparatively small rewards of a permanent Civil Service appointment",[16] probably goes too far.[17] But it indicates that the problem of personnel — the need for hearing officers of adequate education and experience, which the United States Attorney General's Committee on Administrative Procedure described as "the heart of formal administrative adjudication"[18] — has been a pressing one.

The nature of the English public local inquiry depends upon the particular subject matter. "These inquiries, held under different statutes, may vary from small-scale meetings in the waiting room of a wayside railway station to full-dress assemblies in a big town hall with rows of barristers representing different interests."[19] The ordinary case is without counsel, and the procedure is quite informal, the interested parties simply being allowed to state their case and to controvert that of their opponents. The procedure tends to get more formal as the case becomes more important, until, in the case of a large housing scheme or a proposed borough extension, it approaches that of a judicial tribunal. There is an imposing array of K.C.'s on either side, witnesses are examined and cross-examined in detail before a large audience, and the atmosphere approximates that of a courtroom. In such a case, as the Chief Engineering Inspector of the Ministry of Health pointed out to the Committee on Ministers' Powers, one is forced into being more formal than in the

Act, 1946, 9 & 10 Geo. VI, c. 49, 1st Sched.; New Towns Act, 1946, 9 & 10 Geo. VI, c. 68; Agriculture Act, 1947, 10 & 11 Geo. VI, c. 48, s. 92; Town and Country Planning Act, 1947, 10 & 11 Geo. VI, c. 51, s. 41; National Assistance Act, 1948, 11 & 12 Geo. VI, c. 29, s. 58; River Boards Act, 1948, 11 & 12 Geo. VI, c. 32, 1st Sched.; Children Act, 1948, 11 & 12 Geo. VI, c. 43, s. 56; Gas Act, 1948, 11 & 12 Geo. VI, c. 67, s. 11.

[15] Sir Arthur Robinson, Committee on Ministers' Powers, Minutes of Evidence, 159.

[16] Law and Orders (1945) 149.

[17] See *e.g.*, evidence of G. Eve, Committee on Ministers' Powers, Minutes of Evidence, 108.

[18] Report, 46.

[19] Carr, *loc. cit. supra* footnote 12.

ordinary type of inquiry.[20] The actual procedure at the inquiry is regulated by the inspector who "has been given a common-sense code of general instructions telling him how he is to conduct the proceedings",[21] so that although he may not be specially qualified as a lawyer, he has at least been made acquainted with the fundamentals of adversary procedure. At the close of the inquiry, the inspector usually makes a personal survey of the *res* of the proceeding — *e.g.* the slum clearance area involved in a housing scheme — in order to inform himself of its geographical and technical features.

The public proceedings are completed with the holding of the inquiry. The subsequent stages in the process of decision are wholly matters of internal administration, for there are no statutory requirements to which the Executive practice must conform. The next step after the inquiry is for the inspector to submit a report in writing to the relevant Department, containing a summary of the evidence and issues and his recommendations, for the relevant statutes normally provide that the decision of the Minister is to be given after the consideration of the report of the person who held the inquiry.[22] But though the statutes provide that it is the Minister who is to decide, the decision is not his in a literal sense. The decision is, in fact, made by some official in the Department, his rank depending upon the importance of the case, and, except where wide questions of policy are involved, the Minister himself has like as not never heard of the matter. The report of the inspector is generally circulated among the various branches of the Department, who deal with the various points in which they are competent. Thus, if an issue of law arises, it is referred to the legal branch, or a medical question to the medical branch. The final decision is the result of this cooperative process within the Ministry. As far as the individual affected is concerned, however, the curtain came down when the local inquiry was closed. He has seen neither the inspector's report nor the Departmental comment upon it. The final decision is based upon all this material, but all of it is treated as confidential matter. Nobody knows what the inspector reported, and how far his recommendations were followed, or what, indeed, was the basis for the Minister's decision.

It seems obvious even from this cursory survey that, from a strictly legal point of view, there are grave defects in this pro-

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[20] Committee on Ministers' Powers, Minutes of Evidence, 190.
[21] Carr, Concerning English Administrative Law, 114.
[22] *E.g.*, Housing Act, 1936, 1st and 3rd Scheds.

cedure. "Without straining your powers of imagination", said a member of the Committee on Ministers' Powers, after this procedure had been described, "may I translate that into a contest between two people at law. Two people are having a contest at law. It is referred to the Law Courts, the Law Courts send down a representative to hear the evidence, he goes down, he takes the evidence unsworn, he comes back, writes a report to put to the Judge, which is not seen by the parties, it is merely advisory. That is commented upon by somebody else in the Courts. It goes to another part of the Courts where it is also discussed. An official, an unknown official in the Courts gives a judgment in writing. Can you conceive of that satisfying anybody connected with the case at all?" [23]

One must admit that this comment is not entirely fair, for the comparison with the courts is not an entirely accurate one. The differences in origin and function of courts and administrative agencies preclude the wholesale transplantation of the rules of procedure which have evolved from the history and experience of courts.[24] "The administrative process is, in essence, our generation's answer to the inadequacy of the judicial and the legislative processes." [25] To impose the details of judicial procedure upon Executive agencies would only impede effective administration. "The full utilization of concentrated experience may be frustrated if administrative hearing procedure must be shaped to an inflexible pattern which has been evolved with an eye to the frailty of inexperienced jurors." [26] Some leeway must, therefore, be given to the administrative process in formulating its own procedure. This was recognized at an early time by Anglo-American courts. "The inquiry of a board of the character of the Interstate Commerce Commission", declared the United States Supreme Court in 1904, "should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation, and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law." [27]

But though the procedure of the administrative process may be more elastic than that of the courts, still the fundamental

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[23] Sir John Withers, Committee on Ministers' Powers, Minutes of Evidence, 200.

[24] Mr. Justice Frankfurter in *Federal Communication Commission* v. *Pottsville Broadcasting Co.* (1940), 309 U.S. 134, at p. 143.

[25] Landis, The Administrative Process (1938) 46.

[26] Report of the United States Attorney General's Committee on Administrative Procedure, 61.

[27] *Interstate Commerce Commission* v. *Baird* (1904), 194 U.S. 25, at p. 44.

principles of justice must be observed. Administrative justice must conform to "judicial standards, — not in any technical sense but with respect to those fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature".[28] The rule in England is well stated by Lord Loreburn L.C. in the first important case before the House of Lords on the exercise of judicial power by an Executive Department. "Comparatively recent statutes", he says, "have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view." [29]

The process of decision in English administrative law, which has been described, was put to the test of "natural justice" in the leading case of *Local Government Board* v. *Arlidge*.[30] That case arose under the Housing, Town Planning, &, Act, 1909,[31] which provided for appeals to the Local Government Board from orders of local authorities closing a dwelling house as unfit for human habitation. The procedure on such appeals was to be such as the Local Government Board by rules determined, but the rules were to provide that the Board should not dismiss an appeal without holding a public local inquiry. In the instant case, the Board, after having held the required inquiry, had dismissed the appeal of the house owner. The latter then applied to the courts to quash the decision of the Board, claiming that it was contrary to "natural justice" on the grounds that (1) the

[28] *Morgan* v. *United States* (1938), 304 U.S. 1, at p. 19.
[29] *Board of Education* v. *Rice*, [1911] A.C. 179, at p. 182.
[30] [1915] A.C. 120.
[31] 9 Ed. VII, c. 44, ss. 17, 39.

order of the Board did not disclose by which officer of the Board the appeal had been decided; (2) that he was entitled to be heard orally by the deciding officer; and (3) that he was entitled to see the report of the inspector who had conducted the public local inquiry on behalf of the Board.

The House of Lords rejected the claim of the house owner, and, "so far from disapproving the procedure adopted by the department, regarded it as complying with all the essentials of justice and as having done complete justice to Mr. Arlidge".[32] The Lord Chancellor, Lord Haldane, adverted to the tendency to entrust appeal functions such as that in this case to Executive Departments. "Such a body as the Local Government Board has the duty of enforcing obligations upon the individual which are imposed in the interests of the community. Its character is that of an organization with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently."[33]

The decision in such cases must, of necessity, be that of the Department as a whole, rather than that of any known official or tribunal. Delegation by the head of the Department in whose name the decision is made is necessary to enable the Department to perform its duties. "The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff. When, therefore, the Board is directed to dispose of an appeal, that does not mean that any particular official of the Board is to dispose of it."[34] Lord Shaw goes even farther, referring to the desire of the house owner "to ascertain which, in this great department of State, were the

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[32] Carr, Concerning English Administrative Law, 115.
[33] [1915] A.C. at p. 132.
[34] *Idem*, at p. 133.

actual mind or minds which judged his case" as a "grotesque demand to individualise the department for private purposes". "In my opinion, this demand is unjustifiable. It is not supported by statute, it would be inconsistent with past administrative practice, and it would not tend to, but might seriously impair, administrative efficiency." [35]

The type of vicarious decision permitted by the House of Lords in the *Arlidge* case was disapproved of in strong language by the United States Supreme Court in an important case.[36] There, too, as in the English case, the enabling legislation required a quasi-judicial decision to be made by the administrative agency concerned, in that case the Secretary of Agriculture, after a public hearing. Although the order was formally made by the Secretary, after a hearing before an examiner and argument upon the evidence before another department official, it was claimed that he "had not personally heard or read any of the evidence presented at any hearing in connection with the proceeding and had not heard or considered oral arguments relating thereto or briefs submitted on behalf of the plaintiffs, but that the sole information of the Secretary with respect to the proceeding was derived from consultation with employees in the Department of Agriculture out of the presence of the plaintiffs or of any of their representatives".[37] Or, in other words, that although the order was ostensibly made by the Secretary, the actual deciding function was performed by someone else in the Department. The court held that this did not meet the statutory requirement of a "full hearing". "The requirement of a 'full hearing' ", the opinion states, in language almost diametrically opposed to the famous passage of Lord Shaw in the *Arlidge* case,[38] "has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of facts. . . . The 'hearing' is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given."[39] The official who formally decides must have addressed himself to the evidence and have conscientiously reached the conclusions which he deems it to justify. "That duty cannot be performed by one who has not considered evidence or argument. It is not an im-

[35] *Idem*, at pp. 135-6.
[36] *Morgan* v. *United States* (1936), 298 U.S. 468.
[37] *Idem*, at p. 476.
[38] [1915] A.C. at p. 138.
[39] 298 U.S. at p. 480.

personal obligation. It is a duty akin to that of a judge. The one who decides must hear."[40]

That there are practical difficulties in the literal application of the "one who decides must hear" principle to administrative agencies seems obvious when one considers the great volume and complexity of the matters dealt with by these agencies. The agency head, whether a single individual, as in Britain, or a board, as is usual in the United States, could not possibly dispose of them unaided in the sense in which a court judges the cases which come before it. The device used in both countries is for the administrative hearings to be conducted by subordinate officials, with the actual process of decision taking place elsewhere in the agency. This device, however, when carried to the extent it has been under the principle of the *Arlidge* case, may cause private parties to lose faith in the justice of administrative decisions. "How is it to be expected that a party against whom a decision has been given in a hole-and-corner fashion . . . should believe that he has had justice?"[41] Departmental decisions, with the hearing conducted by one official, and the actual decision made by another, violate the right of the litigant to have his case decided by the one who has heard the evidence. As the conduct of an administrative hearing "becomes divorced from responsibility for decision two undesirable consequences ensue. The hearing itself degenerates and the decision becomes anonymous."[42] That this is not conducive to public confidence in administrative justice is shown by the many criticisms which have been directed against the process of administrative decision on both sides of the Atlantic. As Dean Landis has succinctly put it, if one coming before an administrative tribunal does not know who is going to decide his case, "and if he has his suspicion that it is going to be decided by some two-pence-halfpenny law clerk down the line, you will never get anywhere, in my judgment, with bringing into existence a feeling that justice is being done".[43]

"The great objection to a purely Departmental decision is that nobody knows how it is arrived at."[44] To take the normal type of administrative decision in England, the individual affected is, it is true, granted a hearing before a subordinate official of the relevant Ministry. But the decision takes place in the

[40] *Idem*, at p. 481.
[41] Hewart, The New Despotism (1929) 48.
[42] Report of the United States Attorney General's Committee on Administrative Procedure, 45.
[43] In Symposium on Administrative Law (1939), 9 Am. L. School Rev. 139, at p. 182.
[44] Allen, Law and Orders, 165.

recesses of the Department, and the private individual hears no more of the case until the decision is forwarded to him in the name of the Minister. "I am directed by the Minister to state", he is told by some civil servant in the Department, "that he has carefully considered the report of his inspector", and so on, and "for the foregoing reasons the Minister has decided to dismiss [or allow] the appeal" — when, in all probability, the Minister has never even heard of the matter. It is impossible to say who made the actual decision — what official in the Department directed his mind to the evidence and argument and drew therefrom the final conclusion. What happens in practice is for the report of the inspector to be circulated among the various branches of the Ministry, until the decision is actually made by some person in the departmental hierarchy, his status depending upon the importance of the subject matter. The inspector produces his report to his superior officer, and the latter, in Sir Roger Gregory's phrase, produces it to a bigger flea, and so *ad infinitum* — ultimately it gets the seal of the Minister and is signed by an Assistant Secretary.[45]

It was of this type of decision that an English judge once remarked: "A late Lord Justice — one of great learning and wide experience — Lord Justice Farwell — once stated that he could not trust the whole bench of bishops to do justice under such conditions. With a respect for the episcopate as profound as that of the Lord Justice I entirely adopt his language. I share to the full his distrust of justice administered by a tribunal . . . unassisted and untrammeled by the salutary rules regulating procedure and the admission of evidence in these courts, uncontrolled by the invigorating and corrective criticism provoked and stimulated by publicity, and finally wrapping up its findings in a secret communication to the department which appointed it."[46]

It is not surprising, therefore, that strong criticisms have been directed against the process of Departmental decisions. The decision of his case by a known tribunal before whom one can state his case and meet the contentions of his opponents is vital to the fostering of a belief that justice is being done. "You must satisfy that requirement of the individual who comes before an administrative tribunal, that feeling that he wants to talk to the man who is going to decide that case."[47] The decision by a vast Departmental anonymity falls far short of satisfying

[45] Committee on Ministers' Powers, Minutes of Evidence, 97.
[46] *Law* v. *Chartered Institute of Patient Agents*, [1919] 2 Ch. 276, at p. 293.
[47] Landis, *loc. cit. supra* footnote 43.

that feeling. "I venture to say", asserted Dr. Robson before the Committee on Ministers' Powers, "that everybody knows there is a difference between seeing your appointed tribunal and merely having a letter from the Minister saying that he has taken into consideration your representation and 'I am directed to inform you that the Minister has decided so-and-so'. You do not know who has decided. You imagine the papers have been handed round the Department and that some underling has done it. There is a very large institutional and psychological difference between that and having a definite Tribunal. The parties would see the Tribunal, they would also have an opportunity of knowing what was said against them; and, what I regard as fundamental, they would know the grounds for the decision after it has been made." [48]

American attempts to deal with this problem are most suggestive here. The Federal Administrative Procedure Act of 1946 [49] attempts a partial solution by assimilating the rôles of hearing and deciding officials within the administrative agency to those of trial and appellate courts. Section 8(a) provides that in cases other than those in which the agency itself has conducted the initial hearing or where the agency requires the certification of the entire record to itself for initial decision, the officer who presided at the hearing shall initially decide the case. "Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency." A procedure such as this gives greater weight to the position of the hearing officer. It recognizes that, as the one who has received the evidence and heard the witnesses and arguments, he is best qualified to make at least a tentative decision. It elevates him from the rôle of adviser to that of judge.

The position of the hearing officer in English administrative law — *i.e.*, of the inspector at the public local inquiry — seems to be a most unfortunate one from the point of view of ensuring public confidence in administrative justice. His rôle is simply that of a monitor at the hearing, with authority to keep order and supervise the taking of testimony. He serves as the medium

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[48] Committee on Ministers' Powers, Minutes of Evidence, 66. One should note an increasing tendency in the direction of definite tribunals, such as those advocated by Dr. Robson. See Robson, Justice and Administrative Law (2d ed., 1937) 474.

[49] See Schwartz, The American Administrative Procedure Act, 1946 (1947), 63 L.Q.R. 43.

of transmission from the private individual to the ultimate judge, but he has little or no power to play a real part in the final decision of the case. The inspector at such inquiries, said Buckley L.J., "is not within the class of persons who can decide anything. His duty, in my opinion, is to hear the examination and cross-examination of the witnesses and to record it and transmit it to the Board with whom it lies to determine the result. He may also, I think, and certainly it has long been the custom that he should, make a report. This, I take it, will assume the form of a critical examination of the evidence adduced before him and an expression of his opinion upon the questions of fact as appearing upon it."[50] The lack of real power in the English hearing officer, as compared with his American counterpart under the Administrative Procedure Act, is well shown by *Rex* v. *Hudson*,[51] where the court held that such an official had no jurisdiction to rule on the question of the *vires* of the proposed Executive action into which he was inquiring. His duty was to inquire into the facts and to report thereon, and it was not for him to deal with the question of *ultra vires* other than as a conduit for the transmission of legal arguments to the Department.[52]

The relatively subordinate position of the English hearing officer cannot fail to have a deleterious effect both upon public confidence and the justness of the decisions themselves. Parties have a sound desire to make their arguments and present their evidence, not to a monitor, but to the officer who must in the first instance decide.[53] They are not likely to be satisfied where their only hearing is before a minor official, who has little to do with the final determination. The type of procedure prescribed under the American Act would do much to meet these defects. It is true that such a procedure would prove unworkable with the type of hearing officer which most English Government Departments use at present. The hearing officer, under a system where he may be called upon to make the initial decision, must have legal as well as technical qualifications. The engineer-inspector, fortified with a common-sense code of procedure, is not competent to make such decisions. But mere legal qualifications are also not enough. "What is really needed is a combination of legal training with special experience or training in the

[50] *Rex* v. *Local Government Board*, [1914] 1 K.B. 160, at p. 186. The position of the inspector is well described by Swift J. in *Marriott* v. *Minister of Health* (1936), 154 L.T.R. 47, at p. 49.

[51] [1915] 1 K.B. 838.

[52] Cf. *In re the Grosvenor Hotel Co. Ltd.* (1897), 13 T.L.R. 309.

[53] Report of the United States Attorney General's Committee on Administrative Procedure, 46.

particular field in which the jurisdiction is to be exercised. . . . The administrative judiciary of the future should consist of youngish men who have had a training in law, who have taken a law degree, or been called to the bar and perhaps practised a little, and who have also a knowledge of the social sciences such as economics, government, public health, business administration, or educational science."[54] Their position must be such, in salary and prestige, as will attract men qualified by education and experience to exercise judicial duties.

With proper personnel, a procedure such as that provided for in the American Act can do much to improve the method of administrative decision. It would allow the hearing officer to play a vital part in the process of Departmental decision, recognizing the truth in Mr. Justice Brandeis' dictum that responsibility is the great developer of men.[55] "If the initial decision — which may dispose of the case or be the statement of it from which appeal may be taken to the [agency] heads — can carry a hallmark of fairness and capacity, a great part of the criticisms of administrative agencies will have been met."[56]

The North Atlantic Treaty

What about the United Nations? Nothing in the proposed Treaty is in any conflict with the United Nations. Our loyalty to that organization is unchanged. Our willingness to carry out our obligations under its Charter continues. Our hope that through the agency of the United Nations we shall yet achieve universal collective security remains. We know, however, that the United Nations cannot at the present time guarantee our security. It would be madness to indulge in self-delusion and to pretend it does. We must therefore take such interim measures as we think necessary, with like minded peace-loving states, to gain the security the United Nations cannot now offer. But the Treaty specifically states that the obligations, under the Charter of the United Nations, of all those who sign the Atlantic Pact remain untouched. It is also provided that action against an aggressor under Article 5 shall cease once the Security Council of the United Nations has taken effective action to restore peace. The Charter itself specifically takes account of the fact that arrangements such as the North Atlantic Pact may be made by some member states. (From a broadcast talk by the Hon. L. B. Pearson, Secretary of State for External Affairs, on March 18th, 1949)

[54] Robson, Justice and Administrative Law, 479.

[55] *St. Joseph Stock Yards Co.* v. *United States* (1936), 298 U.S. 28, at p. 92.

[56] Report of the United States Attorney General's Committee on Administrative Procedure, 43.