American Administrative Law: An Overview

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Like Julius Caesar describing the ancient geographical area, American administrative lawyers also divide their subject into three parts. In the American, as in the British conception, administrative law is concerned with powers and remedies and answers the following questions: (1) What powers may be vested in administrative agencies? (2) What are the limits of those powers? (3) What are the ways in which agencies are kept within those limits?[1]

In answering these questions American administrative law deals with the delegation of powers to administrative agencies; the manner in which those powers must be exercised (emphasising almost exclusively the procedural requirements imposed on agencies); and judicial review of administrative action. These form the three basic divisions of American administrative law: (1) delegation of powers, (2) administrative procedure, and (3) judicial review. This article will seek to present a synoptic survey of these three subjects. Its aim is to present an overview of American administrative law to the Australian jurist, enabling them to understand the essentials of a system that is, at the same time, similar to and yet so different from their own.

Delegation

Administrative power is as old as American government itself. The very first session of the First Congress enacted three statutes conferring important administrative powers. Well before the setting up of the Interstate Commerce Commission (ICC) in 1887 – the date usually considered the beginning of American administrative law – agencies were established which possessed the rule-making and/or adjudicatory powers that are usually considered to be characteristic of the administrative agency. Modern American administrative law, nevertheless, may be said to start with the Interstate Commerce Commission, the archetype of the contemporary administrative agency in the United States. It has served as the model for a host of federal and state agencies vested with delegated powers patterned after those conferred upon the first federal regulatory commission.

Conscious use of the law to regulate society has required the creation of an evergrowing administrative bureaucracy. The ICC has spawned a progeny that has threatened to exhaust the alphabet in the use of initials to characterise the new bodies. Nor has the expansion of administrative power been limited to the ICC-type economic regulation. A trend toward extension into areas of social welfare began with the Social Security Act passed by Congress in 1935. Disability benefits, welfare, aid to dependent children, health care, and a growing list of social services have since come under the guardianship of the administrative process. The increasing concern with environmental matters has also given rise to new agencies with expanded powers. The traditional area of regulation is now dwarfed by the growing fields of social welfare and environmental concern.

The first prime task of American administrative law was to legitimise the vast delegations of power that had been made to administrative agencies, particularly at the time of President Franklin D. Roosevelt's New Deal. Two 1935 US Supreme Court decisions struck down the most important early New Deal statute on the ground that it contained excessive delegations of power because the authority granted under it was not restricted by what the American courts call a defined standard.[2] The requirement of a defined standard in enabling legislation was imposed by the American courts in order to ensure against excessive delegations. The delegation of power must be limited – limited either by legislative prescription of ends and means, or even of details, or by limitations upon the area of power delegated.

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The statute must, in other words, contain a framework within which the administrative action must operate; it must lay down an intelligible principle to which the agency is directed to conform.[3]

The "intelligible principle" serves the function of ensuring that fundamental policy decisions will be made, not be appointed officials, but by the body directly responsible to the people, the legislature. As a federal judge has put it: "At its core, the doctrine is based on the notion that agency action must occur within the context of a rule of law formulated by a legislative body".[4] If there is no guideline in the statute to limit delegations of power, the administrative agency is being given a blank cheque to make law in the delegated area of authority. In such a case, it is the agency, rather than Congress, that is the primary legislator.

Despite these considerations, it must be conceded that, during the past half century, the American courts have moved away from the strict view that laws delegating power must be invalidated unless they contain limiting standards. The 1935 cases are the only ones in which delegations have been invalidated by the Supreme Court. Since then, delegations have been uniformly upheld by the federal courts. Broad delegations have been the characteristic Congressional responses to the endemic crises of the contemporary society. As new crises have arisen, the tendency has been to deal with them by delegating broad power to the Executive. When inflation threatens to get out of hand, Congress gives the President power to stabilise prices, rents, and wages. Though there is nothing in the statute besides the bare delegation of stabilisation power, the courts rushed to sustain the grant, reading into the statute an implied standard which Congress did not bother to put into the statutes.[5] When an energy crisis or some other emergency arises, the unchallenged solution is to confer vast chunks of authority on the President, with no attention given to the need to guide or limit the power delegated.[6] The result is that "the principle that the Constitution prohibits Congress from delegating its legislative authority is essentially nugatory, for little is [now] required of Congress when it wants to obtain the assistance of its coordinate branches".[7]

There has, however, been a countervailing tendency which should be noted. American judges themselves have begun to express dissatisfaction with the trend toward wholesale delegations unrestrained by defined standards. Thus, in a 1993 case, a federal judge declared:

> A jurisprudence which allows Congress to impliedly delegate its criminal law-making authority to a regulatory agency – so long as Congress provides an 'intelligible principle' to guide that agency – is enough to make any judge pause and question what has happened. Deferent and minimal judicial review of Congress' transfer of its . . . law making function to other bodies, in other branches, calls into question the vitality of the tripartite system established by our Constitution.[8]

In 1974, the Supreme Court itself repeated the rule that a delegation of power must be accompanied by discernible standards.[9] In 1980 and 1981, then-Justice, now Chief Justice William H. Rehnquist stated that he would rule that the law at issue was invalid because it contained an excessive delegation of legislative power.[10] Some of the most distinguished American judges, speaking off the bench, have called for revival of meaningful limitations on delegations of power.[11] It is true that these judicial statements have not yet had direct effect on the case law. But they are significant, as an indication of judicial dissatisfaction which may foreshadow a movement back to the days of enforcement of the defined standards requirement. Indeed, the movement may have already begun. A 1995 federal decision struck down a law because "There are no perceptible 'boundaries', no 'intelligible principles', within the four corners of the statutory language that constrain this delegated authority."[12]

Mention should also be made of legislative efforts to control the exercise of delegated powers. The most significant legislative technique

was what came to be called the "legislative veto" – exercised through statutory provisions empowering one or both Houses of Congress to disapprove delegated agency decisions by passage of an annulling resolution.

The technique is derived from the practice of 'laying' delegated legislation before Parliament, subject to annulment by resolution of either House, which has long been an established feature of English administrative law. However, in a 1983 case, the US Supreme Court decided that the 'legislative veto' technique violates the constitutional requirement of separation of powers.[13]

Administrative Procedure

American administrative law has been based upon Justice Frankfurter's oft-quoted assertion that "the history of liberty has largely been the history of the observance of procedural safeguards'.[14] The American system, more than any other, has emphasised administrative procedure (the procedural requirements imposed upon what Continental European jurists term the active administration). The starting point in such emphasis has been the constitutional demand of due process. "When we speak of audi alteram partem – hear the other side – we tap fundamental precepts that are deeply rooted in Anglo-American legal history",[15] precepts that are now a command, spoken with the voice of due process.[16] But American law has gone well beyond the constitutional minimum. Building upon the due process foundation, the law has constructed an imposing edifice of formal procedure. The consequence has been a virtual judicialisation of American agencies; from the establishment of the Interstate Commerce Commission to the present, much of the American administrative process has been set in a modified judicial mould.

Rule-Making

One must, however, note that application of the due process requirement in specific cases depends upon the function being exercised by the given administrative agency. In particular, the crucial dividing line is that between rule-making (the common American term for exercise of what in English administrative law are termed powers of delegated legislation) and adjudication. Rule-making is the administrative equivalent of the legislative process of enacting a statute. Agencies engaged in rule-making are, as a general proposition, no more subject to constitutional procedural requirements than is the legislature in enacting a statute. This means that agencies are freed from the necessity of imitating courts when they are functioning as sub-legislatures; except for specific statutory requirements, the procedure to be followed in rule-making is largely a matter for the agency concerned. Unless a statute requires otherwise, a rule or regulation will normally not be invalid because of agency failure to hold a hearing or to consult or otherwise seek the views of those affected.

However, the Federal Administrative Procedure Act (APA) (a statute enacted by Congress in 1946, which imposes general procedural requirements on all federal administrative agencies) does impose procedural requirements upon rule-making. In general, it may be said that the APA provides for a system of antecedent publicity before agencies may engage in substantive rule-making. General notice of any proposed rule-making must be published in the *Federal Register* (the official publication in which federal administrative regulations are published). The agency must then afford interested persons the opportunity to participate in the rule-making process through submission of written data, views, or arguments, with the opportunity to present them orally in some, but not most cases, with all relevant matter so presented to be considered by the agency. Rule-making under the APA is often called 'notice and comment' rule-making. The APA does not mandate anything like a formal hearing prior to rule-making. All that it requires is that the agency publish the notice of proposed rule-making and give interested persons an 'opportunity' to participate. The purpose is to work a democratisation of the rule-making process without destroying its flexibility by imposing procedural requirements that are too onerous. It may

be true, as a noted opinion pointed out, that most people have neither the time nor the interest to read the 'voluminous and dull' *Federal Register*.[17] But those subject to administrative authority tend to be members of trade, business, professional, or other organisations interested in the subject areas of a particular agency, which regularly scan the *Register* for relevant notices of proposed rule-making and then, after alerting their members, send in materials supporting the organisation's view to the agency concerned.

Notice and comment rule-making under the APA has been criticised as not providing enough procedural safeguards, especially where there are factual premises that are needed to support a rule. Although some courts tried to impose stricter procedures, the Supreme Court aborted this line of cases in *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defence Council*.[18] In that case, the lower court had struck down a rule dealing with the uranium fuel cycle in nuclear power reactors because of inadequacies in the procedures employed in the rule-making proceedings. The agency had complied with the APA notice and comment requirements, but the appellate court held that more should be required in order to facilitate full ventilation of the issues. The Supreme Court reversed on the ground that the APA lays down the only procedural requirements for informal rule-making. To require more, said the Court, would "almost compel" the agency to conduct all rule-making proceedings with the full panoply of procedures required in adjudicatory hearings.

The Supreme Court decision means that, if agencies are to be required to follow stricter procedures than those imposed by the APA, such requirements will have to be imposed by Congress, or by the agencies themselves, but not the courts. It is, however, unlikely that the APA will be amended to require more than notice and comment procedures in most rule-making. Recent years have seen a tremendous expansion of rule-making power in America. Both Congress and the courts have fostered the trend toward rule-making. But that does not mean that rule-making should be moved in a judicialised direction. To do so would defeat the principal advantages of the rule-making process — flexibility and informality.

Adjudicatory Procedure

If the general principle governing rule-making in the United States is that due process does not require formal procedures before regulations are promulgated, the constitutional principle governing administrative adjudications is the opposite one. The requirement of due process has been interpreted as requiring a formal adversarial hearing — what has come to be called an evidentiary hearing — before administrative decisions which adversely affect private individuals may be made. It is with regard to adjudicatory decisions that the American administrative process has, as already noted, been set in the judicial mould.

This means that, before an administrative decision which adversely affects an individual may be made, that person has a right to an evidentiary hearing, which means 'hearing closely approximating a judicial trial.'[19] Included in that right is the right to:

(1) notice, including an adequate formulation of the subjects and issues involved in the case;

(2) present evidence (both testimonial and documentary) and argument;

(3) rebut adverse evidence, through cross-examination and other appropriate means;

(4) appear with counsel;

(5) have the decision based only upon evidence introduced into the record of the hearing;

(6) have a complete record, which consists of a transcript of the testimony and arguments, together with the documentary evidence and all other papers filed in the proceeding; and

(7) have the agency explain the basis for its decision — an important means of assur-

ing agency adherence to the law, within the broad discretion given on fact, policy, and even legal issues.

Comparative observers have criticised the American requirement of a full hearing with a formal record before administrative adjudications. How can administration be carried on effectively if every administrative decision which affects private rights must be preceded by a trial type hearing? This question was addressed to the present writer when he testified before the Franks Committee investigating administrative law in Britain. Does not the right to a full hearing "tend to gum up the administrative works"? — this was the query asked by a British barrister.

The answer given was a negative one:

> . . . in our experience the rights which individuals have are not insisted upon in every case . . . It does not happen in that way for various reasons, in part the question of expense, in part the fact that there is no point really at issue and therefore no point in going through the formality of a hearing. I have seen the figures in some agencies, and in none of them are full rights insisted upon in more than five per cent of the cases. That is what makes the thing workable.[20]

The individual's right to a full hearing does not mean that a full "day in court" must automatically be held in connection with every trifling dispute. If the right to a formal hearing were insisted upon in every case where it exists, it would virtually paralyse administration. But the fact is that the right is asserted in only a very small percentage of the cases. The leading official study of American administrative law noted that hearings were held in less than 5 percent of the cases disposed of by federal regulatory agencies. In non-regulatory agencies the percentage of hearings is even smaller. During the 1992 fiscal year, the Department of Health and Human Services processed over 100 million claims; in that period some 250,000 HHS hearings were held.

The constitutional right to due process gives the individual affected a right to an evidentiary hearing. Like other constitutional rights, the right to be heard can be waived.[22] The vast bulk of agency decisions are made without resort to formal proceedings, because the right is waived most of the time.

Three important developments with regard to American adjudicatory procedure should be noted. The first is the extension of the right to an evidentiary hearing from the older field of regulatory administration to the burgeoning benefactory apparatus of the Welfare State. Before 1970, the latter was still beyond the due process boundary since there was a constitutional right to procedural safeguards only in cases where the administrative decision adversely affected the individual in his rights. If the individual was being given something by government to which they had no preexisting 'right', they were being given a mere 'privilege' and was "not entitled to protection under the due process clause."[23]

All this was changed by the landmark decision in *Goldberg v. Kelly,*[24] which held that public assistance payments to an individual might not be terminated without affording that person an opportunity for an evidentiary hearing. The Court specifically rejected the rule that there was no right to a hearing because public assistance was a mere 'privilege'. "The constitutional challenge," declared the Court, "cannot be answered by an argument that public assistance benefits are a 'privilege' and not a 'right'." It is no longer accurate to think of welfare benefits as only privileges. "Such benefits are a matter of statutory entitlement for persons qualified to receive them." In this sense, they are "more like 'property' than a 'gratuity'."[25]

The same reasoning applies to other cases involving social welfare benefits, particularly those under the Social Security Act — the federal statute which provides for extensive programs of old age, survivors, disability, and medical insurance, as well as aid to families with dependent children, supplemental security income, and other social welfare programs. The

Supreme Court has, however, held more recently that, with regard to some of these federal benefactory programs, not involving dire need, the required evidentiary hearing may be held after the payments to the individual concerned have been terminated by the administration.[26]

Secondly, the Supreme Court has recently been following a cost-benefit approach to the question of the particular procedures to be required in an administrative proceeding. The Court has indicated that question is to be determined under a tripartite test that requires the balancing of:

(a) the private interests affected;

(b) the risk of an erroneous determination through the process accorded and the probable value of added procedural safeguards; and

(c) the public interest and administrative burdens, including costs that the additional procedures would involve.[27]

The Court has used the cost-benefit test to decide that the exclusionary rule (which bars the admission of illegally seized evidence in a criminal trial) does not apply in an administrative hearing to determine whether an alien should be deported.[28] The Court's analysis concludes that the costs involved in applying the rule in such an administrative proceeding far exceed the benefits to be secured from excluding the evidence in the given case. The decision has been criticised as reducing basic rights to the level of the counting house, but it has been followed by other American courts.

The third important development with regard to American adjudicatory procedure concerns the important changes made in the processes of hearing and decision in federal agencies by the Administrative Procedure Act (APA). The APA set up within each agency a corps of independent hearing officers originally called hearing examiners. These examiners, who were given powers comparable to those of judges in the courts, were to preside over evidentiary hearings. Under the APA, examiners were empowered to issue initial decisions, which became the decisions of the agencies concerned unless those decisions were appealed.

What the APA did was to set up within each agency the equivalent of first-instance and appellate tribunals. The first-instance level was to be at the hearing stage, before an independent hearing official vested with the power to make a decision, subject to appeal to the agency heads, who were thus relegated to the appellate level. More recently, there has been a further judicialisation of the trial level. The hearing officers provided under the APA have evolved into an administrative judiciary, endowed with authority to make binding decisions (subject to appeals to the agency heads) in adjudicatory proceedings. In 1978, Congress confirmed this development by a statute which expressly changed the title of APA hearing examiners to administrative law judges.

The evolving system of American administrative justice brings to mind an opinion of the US Supreme Court almost half a century ago, which referred to the distinction between American law, in which one system of law courts applies both public and private law, and the practice in a Continental European country such as France, which administers public law through a system of administrative courts separate from those dealing with private law questions.[29] The French administrative courts are specialised tribunals that review the legality of administrative acts. Although proposals have been made for establishment of comparable American administrative courts, the French concept of administrative reviewing courts has largely remained foreign to American administrative lawyers.

Under the Federal APA, however, the American system has taken its own path toward establishment of an administrative judiciary — but, in the American version, an administrative trial judiciary. The evolution of hearing officers under the APA, culminating in their judicial status as administrative law judges, sets the pattern for the developing system of American administrative justice. In particular, we can project a continuing increase in

the size of the administrative judicial corps. When the APA provisions went into effect, the federal agencies employed 197 examiners. In 1992, there were over 1,200 administrative law judges in thirty federal agencies - over 70% (850) were in the Social Security Administration, reflecting the impact of that agency's mass justice upon the administrative process. Only the fiscal squeeze of recent years has prevented the number from rising substantially higher. The Social Security Administration alone projects an administrative law judge corps of well over 1,000 in the next decade. In the next century, we can predict that there may well be a federal administrative judiciary running into the thousands and administrative law judges in ever-increasing numbers dispensing both regulatory justice and the mass justice of an expanding Welfare State.

Judicial Review

Availability – Judicial review is the balance wheel of American administrative law. It enables practical effect to be given to the basic theory upon which administrative power is based: "When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted."[30] The responsibility of enforcing the limits of statutory grants of authority is a judicial function: when an agency oversteps its legal bounds, the American courts will intervene. Without judicial review, statutory limits would, to paraphrase Hobbes, be naught but empty words.

The overriding American review principle is that in favour of the availability of review. "Indeed, judicial review of . . . administrative action is the rule and nonreviewability an exception which must be demonstrated."[31] In the American system, the original common law system of review has largely been superseded by an elaborate statutory superstructure. Enabling statutes generally provide for judicial review of most agencies. The failure of Congress to provide for judicial review does not, however, mean that review is precluded. "The mere failure to provide specially by statute for judicial review is certainly no evidence of intent to withhold review."[32]

The leading case is *Stark v. Wickard.*[33] Under it, the omission of review provisions by the legislature gives an administrative agency no immunity from the normal judicial scrutiny of the legality of its actions. In another case the US Supreme Court stated that "judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress."[34] Mere legislative silence is not such "persuasive reason"; it indicates only that the legislature intended to leave the individual to the general review remedies available in American administrative law — the non-statutory remedies derived from English law, as well as that under the Federal Administrative Procedure Act, since there is a general provision for judicial review in the APA.[35] To hold otherwise would be contrary to the ultra vires theory upon which the American system is based, under which administrative power is limited to the authority granted by statute. "The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts . . . by the statutes establishing courts and marking their jurisdiction."[36]

A similar result is reached even when a statute contains a preclusive provision which appears to prohibit judicial review. Thus, in an important case, the American Court held that judicial review was available despite the fact that the statute provided that the challenged administrative decision "shall be final."[37] This is the approach that is normally followed where American statutes provide for administrative finality: "Tolerance of judicial review has been more and more the rule against the claim of administrative finality."[38] As the Supreme Court has stated, "We begin with the strong presumption that Congress intends judicial review of administrative action."[39] A finality provision alone is not enough to justify preclusion, though a literal reading might support such a result. "Examples are legion where literalness

in statutory language is out of harmony either with constitutional requirements . . . or with an Act taken as an organic whole."[40]

What has just been said is illustrated by a case where the statutory provision appeared categorically to preclude all judicial review of specified administrative decisions. The relevant agency had denied a disability claim. The lower court held that the review action was barred by the statutory preclusion provision, which provided that agency determinations "concerning [disability] are final and conclusive and are not subject to review."

The Supreme Court reversed, holding that even such a "door-closing statute" was not intended to bar all review. Instead:

> judicial "review is available to determine whether there has been a substantial departure from important procedural rights, a misconstruction of the governing legislation, or some like error "going to the heart of the administrative determination.""[42]

Scope – When the American courts review administrative acts, the overriding consideration is that of deference to the administrative expert. The result has been a theory of review that limits the extent to which the discretion of the expert may be scrutinised by the non-expert judge. The basic approach was stated over half a century ago: "We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission."[43]

The consequence has been a theory of review which provides for only limited review where questions of fact are at issue — the theory being that it should be the primary responsibility of the administrative expert to find the facts in a given case. The courts may review administrative adjudications of fact only to determine whether they are supported by substantial evidence. As explained by an English observer, "the scope of judicial review over [American] administrative action is limited to ... whether or not the findings of fact underlying the administrative conclusion are based upon substantial evidence."[44] As interpreted by the American Court, substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[45]

The 'substantial evidence rule' (as it is called) tests the rationality of administrative determinations of fact; it is a test of the reasonableness, not the rightness, of administrative factual determinations.[46] All that is needed is evidence which a reasonable person would accept as adequate to support the determination.

In two early cases – those involving so-called 'constitutional facts'[47] and those involving 'jurisdictional facts'[48] – the US Supreme Court indicated that the courts might more fully review the administrative determinations and determine their correctness on their own independent judgment. More recently, the Court has receded from these statements and indicated that even determinations upon which constitutional rights and jurisdiction depend are to be reviewed only under the substantial evidence test – ie. the reviewing courts are to determine only the reasonableness, not the rightness, of these administrative determinations.[49]

Mention should also be made of the so-called *Chevron* doctrine (after a case of that name),[50] which now governs review of administrative interpretations of statutes. Statutory interpretation is, of course, governed primarily by legislative intent: if Congress has clearly said what a statute means, its intent must be followed. The *Chevron* doctrine applies when a statute is ambiguous – ie. its meaning is not made clear in the language or legislative history of the statute. Under *Chevron,* the administrative agency, not the reviewing court, has the primary role in giving meaning to the statute. The agency's statutory interpretation is to be upheld if it is *reasonable,* even if it is not right, in the sense that the court would interpret the statute in the same way.[51] *Chevron* requires the courts to give effect to a reasonable administrative interpretation of a statute unless

that interpretation is inconsistent with a clearly expressed Congressional intent.

Chevron has been criticised as inconsistent with the very basis of the law of judicial review.[52] From almost the beginning of administrative law in the United States, review has focused upon two main questions: that of jurisdiction and that of proper application of the law. The American courts have left questions of fact and policy for the administrator, subject only to limited review. Ensuring that agencies remain within the limits of their delegated powers and that they have not misconstrued the law has, on the contrary, been conceived of as a judicial function. Yet, under the *Chevron* doctrine, both statutory construction and the determination of agency jurisdiction are taken from the reviewing court and vested primarily in the administrator.

The dominant theme in the American scope of review is now that of *Chevron* deference. Under it, there is limited review not only over administrative determinations of fact, but also over agency interpretations of law. *Chevron* deference assimilates review of questions of statutory interpretation into review of questions of fact. Indeed, according to a federal court, the *Chevron* doctrine all but does away with the law-fact distinction that has been so basic in American administrative law.[53]

Notes

1. Compare Griffith and Street, *Principles of Administrative Law* 3 (2nd ed., 1957).
2. *Schechter Poultry Corp. v. United States*, 295 US 495 (1935); *Panama Refining Co.v. Ryan*, 293 US 388 (1935).
3. *Mistretta v. United States* 488 US 361 (1989).
4. Wright, 'Beyond Discretionary Justice', 81 Yale L.J. 575, 583 (1972).
5. *Amalgamated Meat Cutters v. Connally*, 337 F. Supp. 737 (D.D.C. 1971).
6. Eg. *Emergency Petroleum Allocation Act,* 87 Stat. 627 (1973); *Federal Energy Administration Act,* 88 Stat. 96 (1974).
7. *United States v. Mills*, 817 F. Supp. 1546, 1552 (N.D. Fla. 1993).
8. Ibid.
9. *National Cable Television Assn. v. United States*, 415 US 336, 342 (1974).
10. *Industrial Dept. v. American Petroleum Inst.*, 448 US 607, 675 (1980); *American Textitel Mfrs. v. Donovan*, 452 US 490 at 542 (1981).
11. See Douglas, *Go East Young Man* (Random House, 1974) 217; Wright, supra note 4 at 582-6.
12. *State v. Department of the Interior*, 69F.3d 878, 882 (8th Cir. 1995).
13. *Immigration and Naturalisation Service v. Chadha*, 462 US 919 (1983).
14. *McNabb v. United States,* 318 US 332, 347 (1943).
15. *In re Andrea B.*, 405 N.W.S.2d 977, 981 (Fam. Ct. 1978).
16. *Caritativo v. California*, 357 US 549, 558 1958).
17. *Federal Crop. Ins. Corp. v. Merrill*, 332 US 380, 387 1947).
18. 435 US 519 (1978).
19. *Mathews v. Eldridge*, 424 US 319, 325 (1976).
20. Committee on Administrative Tribunals and Enquiries: *Minutes of Evidence* 1034 (1956).
21. Report of the Attorney General's Committee on Administrative Procedure 35 (1941).
22. *National Indep. Coal Operators Assn. v. Kleppe*, 423 US 388 (1976).

23. *Gilchrist v. Bierring*, 14 N.W.2d 724, 730 (Iowa 1944).
24. 397 US 254 (1970).
25. Id. at 262.
26. *Mathews v. Eldridge*, 424 US 319 (1976), with retroactive payments if the individual prevails at the hearing.
27. *United States v. Raddatz*, 447 US 667, 677 (1980).
28. *Immigration and Naturalisation Service v. Lopez-Mendoza*, 468 US 1032 (1984).
29. *Garner v. Teamsters Local* 776, 346 US 485, 495 (1953).
30. *Stark v. Wickard*, 321 US 288, 309 (1944).
31. *Barlow v. Collins*, 397 US 159, 166 (1970).
32. *Administrative Procedure Act*: Legislative History 275 (1946).
33. 321 US 288 (1944).
34. *Abbott Laboratories v. Gardner*, 387 US 136, 140 (1967).
35. *Ortego v. Weinberger*, 516 F.2d 1005, 1009 (5th Cir.1975).
36. 321 US at 310.
37. *Shaughnessy v. Pedreiro*, 349 US 48 (1955).
38. Douglas J., dissenting, in *Union Pac. R. Co. v. Price*, 360 US 601, 619 (1959).
39. *Barlow v. Collins*, 397 US 159, 166 (1970).
40. *Oestereich v. Selective Service Bd.*, 393 US 233, 238 (1968).
41. *Czerkes v Department of Labor*, 73 F.3d 1435 (1996).
42. *Lindahl v. OPM*, 470 US 768, 791 (1985).
43. *Board of Trade v. United States*, 314 US 534, 548 (1942).
44. Wade, Foreword to Schwartz, *American Administrative Law* vi. (1950) (italics omitted).
45. *Consolidated Edison Co. v. Nat'l. Labor Relations Bd.*, 305 US 197, 229 (1938).
46. *Matter of Otero Elec. Co-op.*, 774 P. 2d 1050, 1053 (N.M. 1989).
47. *Ohio Valley Water Co. v. Ben Avon Borough*, 253 US 287 (1920).
48. *Crowell v. Benson*, 285 US 22 (1932).
49. For a discussion of the cases, see Schwartz, *Administrative Law* §§ 10.23, 10.28 - 10.29 (3rd ed. 1991).
50. *Chevron v. NRDC*, 467 US 837 (1984).