

# Justice Without the Scales

By Lloyd Buchman

"Quasi-judicial" is a contradiction in terms, and this all too readily accepted phrase should be considered as a social phenomenon arising from an economic maladjustment. For the sake of both accuracy of expression and clarity of thought, it would be better, as will soon be evident, if we substituted for "quasi," meaning "almost," the word "aliquando" meaning "sometimes."

Our government is based on the principle that the least government compatible with the welfare of its citizens is the best government. To guard against invasion of our rights by others and to provide the maximum of personal freedom compatible with collective security, we have established in the first three Articles of the Federal Constitution the Legislative, Executive and Judicial departments as separate branches of our government. It is in point to note the importance of independence of the judiciary for in the absence of such a condition the Legislative and Executive could function without restraint.

While it is true that the power to declare acts and actions unconstitutional may be abused (and which power may not be), we must, to the extent that we recognize any governing body, place our confidence ultimately in some person or group of persons; and our history during the past one hundred and fifty years has tended to build a tradition around our Courts. In this respect even those who are most opposed to our form and methods of government will agree that as tradition, reinforced in this case by the presence of the co-ordinate branches of government, grows older and stronger, the probability of continuing it and of maintaining the Courts inviolate and impartial, increases. With this preliminary discussion I have per-

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(The growing number of government agencies that seem to have partly judicial and partly executive powers—some where between bureaucracies and courts—is a matter of much concern to students of both government and sociology. In this article a legal mind analyses the character of these bodies and points to their social implications.)

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haps explained what I mean by, and why I use, the phrase "judicial tradition."

Let us now turn to a consideration of so-called quasi-judicial agencies as we know them. While they are not a Rooseveltian innovation, the last few years of economic depression have witnessed a marked growth in their number and the extent of their powers. These bodies are created not as Courts with general powers to apply accepted principles to determined facts, but rather for highly specialized purposes. In their procedure these agencies are perhaps, at first, judicial, and at least on principle they can in this stage recognize judicial tradition. Of course, in the performance of judicial functions there can be no compromise with principles of justice, equity and fair dealing.

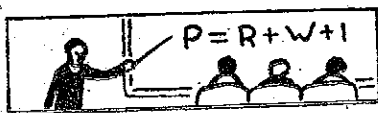
Exercise of administrative or executive functions, on the other hand, are wholly incompatible with these principles. Hence one person or group of persons cannot properly fulfill both types of functions unless there is first, a clear realization of judicial requirements and second, a complete demarcation between the respective functions.

The above thoughts can readily be applied to various existing governmental agencies. The Interstate Commerce Commission, proceeding carefully and weighing every step, has slowly developed a body of law and procedural rules always bearing in mind established principles in true judicial manner. Of equal importance is the fact that the Commission deals with "monopolies" and acts

within the recognized police powers of the government. Here we have two tests by which other independent agencies can be judged; are the proceedings judicial in nature, and do they act within the scope of accepted governmental powers.

Let now the Bituminous Coal Board concern itself with conservation matters and it is exercising a governmental function; deliberations based on such concern and unmotivated by extraneous matters would be judicial. Let it, however, consider such questions as the number of miners unemployed or the price advantage of one locality over another due, not to monopolistic control, but to such factors as location, quality of product, etc., and it is not even within the scope of government—unless government is to be paternalistic. Again appoint that Board with the specific purpose (or hope) of improving economic conditions by assisting one group and limiting another, and there is an absence of judicial method.

Similar thoughts and distinctions are applicable to other agencies, the National Labor Relations Board, the Federal Trade Commission, the Federal Power Commission, the Securities and Exchange Commission, the Federal Commerce Commission, the Maritime Commission, the National Mediation Board, various conservation Commissions, and the Tennessee Valley Administration, to name but a few. If we recognize any of these as unjudicial in function, and if we seek paternalism or authoritarianism in government, well and good. If, however, we adhere to the principle above referred to, that the least government is the best government, let us apply to each agency or governmental body the two tests—are they administered with judicial attitude and do they fall within the scope of government—and let



us not so readily accept the word "quasi-judicial."

At this point, we can perhaps agree that there is no such thing as "quasi-judicial." There is or there is not a judicial attitude; if proceedings be "somewhat" judicial, to the extent that they are not there must be by definition a failure to apply principles of right and wrong and therefore an absence of justice; and the blind-folded lady deprived of her scales may wield the sword with most disastrous effect.

There exists the possibility, it is true, that an agency may function in true judicial manner, and then change its character so completely in connection with administrative duties that the dividing line will be always evident. But how many of the bodies mentioned above, have realized this theoretical possibility? And how many of us, in considering the term "quasi-judicial" think of it as denoting no compromise with the true judicial function? Do we not rather expect something literally "almost judicial," and so condone steps taken toward what is variously referred to as a government of men instead of laws, paternalism, authoritarianism.

This entire question is not only important but is likewise interesting from the Georgist point of view, as the creation of so many administrative bodies is traceable to a desire for paternalism born of the failure of the present economic structure to function. Similarly, the constant shifting of policy, searching for new and different plans, the call for speedy action, the premium placed on administrative haste rather than on judicial deliberation—all of these arise out of the same economic dislocation and the desire to escape from the evils attendant thereon.

Research might disclose commissions and agencies usurping judicial functions in ancient civilizations, although where a monarch was absolute, he represented all of the functions of paternalistic government and the submergence of the judicial branch. But little research is necessary to recognize the trend toward paternalism and dictatorship (which arrives with the departure of the judicial process) as fore-runners of the decline of all peoples, their governments and civilizations.