V. CONCLUSIONS

A. Individual versus State

The philosophical framework brooding beneath the specific scrutinies of this monograph is, of course, the age-old poser of the Individual versus the State.[833] Stated broadly, its resolution in Western society has been sought in the abjuration of extremities. Rather than to pursue one end to the exclusion of the other, we have endeavored (though not always with success) to mesh, as harmoniously as possible, individual self-assertion with community interest as interpreted and enforced by the state. Indeed, the very objective of law in our system is to effectuate a balance between the two.[834] The individual is constrained, in the public or community interest, against undertaking certain activities proscribed by the governing agent. On the other hand, the state is limited, by constitution or otherwise, both in the activities it may prohibit (and/or require) and in the procedures by which it may do so. Thus, from the perspective of the individual, the law in some instances is confining while in others it affords him assistance.

But the balance is a precarious one. Changing conditions tilt the fulcrum from this side to that, and then back again; on the one extremity, anarchy; on the other, despotism. The critical concern of our day is, of course, with the latter. As has been indicated, the well-nigh frenetic concern with security, both military and social, has produced a gigantic governing mechanism in this country. Conditions have so required, and no suggestion is intended that the increase in size nor the proliferation of activities should or could have been otherwise. Indeed, to seek equipoise by requiring that government relinquish powers and activities in a grandiose program of self-atrophication is as ridiculous in this day and age as to counsel weight reduction by cutting off arms and legs. In either case, the technique suggested might effect the end sought, but at what price!

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833. See generally on this problem, Duguit, Law in the Modern State (1919).

834. Cf. Potts v. Coe, 145 F.2d 27 (D.C. Cir. 1944).

The necessity for big government is not grounds for a counsel of despair, nor for resorting only to the hope that the despot will be benevolent. This, in fact, is the whole point of the limitation doctrine as enunciated herein—individual rights and community interests as propounded and enforced by the state can be balanced other than quantitatively. This, as has been said (and, it is hoped, to some extent demonstrated) is the aspiration of administrative law. Recognizing the indispensability of big government, its mission, in effect, is "to govern the governors," to accord the counterweight to government power.

B. Form and Substance

Theoretically, at least, the rule of limitation has significance to all three levels of government in this country. The exercise of power can be arbitrary and capricious regardless of the geographical area affected. Furthermore, government is designed, in our system, to be the servant, not the master, of the people. And, this is true regardless of whether its particular manifestation be federal, state, or local in scope. Thus, the limiting objectives of administrative law have application to municipal administration, no less than to its counterparts at the higher governing levels.

As has been seen, however, the specific embodiments of the limitation principle manifest different forms at each of the three levels of government. The requirement of standards, all but emasculated as a check upon federal administration, retains somewhat more vitality in the states and is of great consequence locally. On the other hand, procedural checks (or, alternatively, individual safeguards) imposed by general legislation have replaced the need for strict standards at the federal level. The states, it will be recalled, stand somewhere in between; where procedural statutes of the nature of the Administrative Procedure Act are in operation, the requirement of standards is correspondingly mitigated. Where no such acts exist, the requirement remains of importance.

The form, therefore, is not the crucial concern. The substance of restraint is volatile and capable of many shapes. The important thing is that limitation, whether in the guise of the separation of powers, administrative procedure acts, an expanded scope of judicial review, or whatever, be affirmatively employed to prevent the exercise of arbitrary, unrestrained power. Government, it cannot be emphasized enough, is the agent of the individual, not his principal.

Such is by no means to suggest that the government should be hamstrung with restrictions to the point of rendering its proper operation impossible. The needs of defense and service require a vigorous, positive governmental mechanism. This is to suggest, however, that the fundamental basis of our governmental philosophy—the inherent worth of the individual, that the very objective of government is to protect and promote his self-attainment and realization—be not submerged in the murky waters of a "Garrison-Service State." Balance there must be, but with power should go limitation, else power is corrupted and the purpose of its giving, prostituted beyond recognition.

C. Realigning the Balance

The gargantuan rise of big government (federal, state, and local) as has been said, has represented a necessary response to the conditions of the times. And, new needs, in turn, generate argument as to the utility of the time-honored governmental concepts erected in days when needs were simpler and problems less severe. Thus, to some observers the political models attendant at the incipiency of our nation should be scrapped, as inadequate to cope with the realities of the twentieth century.[835] Others, seeking in the traditions of the past security in these troubled times, cling tenaciously to the ancient theories, regarding even the slightest question as to their current applicability to be an assault on everything they hold dear and precious.[836]

The point is that the modes of limitation are but means of actualizing the substance of the limitation doctrine itself. The central objective, in this context, is that government be "for the people." If this means that modern conditions compel that the separation of powers idea be obviated as regards federal administrative agencies, and a general act prescribing procedural limitations be constructed in its place, no great deviation would appear to be required as to ends, as to fundamental theories of our governmental complex. Limited government is still the goal and is still achievable. Only its form has been altered, more adequately to adjust to the realities of the times. This, as indicated, is, likewise, the direction of state development.

Municipal administration, however, which never embraced fully the separation idea to begin with, has evolved differently.

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835. Cf. Laski, "The Obsolescence of Federalism," 97 New Republic 367 (May 3, 1939).

836. Cf. Goldwater, The Conscience of a Conservative (1960).

from obtaining judicial review of such administrative decision. If under the terms of the statute or ordinance governing the procedure before an administrative agency an administrative decision becomes final because of failure to file any document in the nature of objections, protests, petition for hearing, or application for administrative review within the time allowed by such statute or ordinance, such decision shall not be subject to judicial review hereunder excepting only for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.

Section 3. [Commencement of Action.]

(1) Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within thirty days from the date that a copy of the decision sought to be reviewed was served upon the party affected thereby.

(2) The method of service of the decision shall be as provided in the statute or ordinance governing the procedure before the administrative agency, but if no method is provided, a decision shall be deemed to have been served either when personally delivered or when deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to the party affected thereby at his last known residence or place of business.

Section 4. [Jurisdiction and Venue.]

(1) Jurisdiction to review final administrative decisions is vested in the. . . . . [Insert name of appropriate Court.] If the venue of the action to review a final administrative decision is expressly prescribed in the particular statute or ordinance under authority of which the decision was made, such venue shall control, but if the venue is not so prescribed, an action to review a final administrative decision may be commenced in the County Court in which the relevant Municipal Corporation is situated.

Section 5. [Service of Summons.]

(1) Summons issued in any action to review the final administrative decision of any administrative agency shall be served by registered or certified mail on the administrative agency and each of the defendants as in civil cases.

Section 6. [Appearance of Defendants.]

(1) In any action to review any final decision of any administrative agency, the agency shall appear by filing an answer

consisting of a record of the proceedings had before it, or a written motion in the cause or a written appearance. All other defendants may appear by filing a written motion, answer or appearance.

(2) Every motion, answer or appearance shall be filed within twenty days after service of summons upon said defendant.

Section 7. [Defendants.]

(1) In any action to review any final decision of an administrative agency, the administrative agency and all persons, other than the plaintiff, who were parties of record to the proceedings before the administrative agency shall be made defendants.

Section 8. [Pleadings and Record on Review.]

(1) Complaint. The complaint shall contain a statement of the decision or part thereof sought to be reviewed, as well as the grounds upon which the complaint seeks reversal or affirmative action. Upon motion of any defendant, or upon its own motion, the court may require of the plaintiff a specification of the errors relied upon for reversal or the specific grounds upon which affirmative agency action is sought to be required.

(2) Answer. Except as herein otherwise provided, the administrative agency shall file an answer which shall consist of the original or a certified copy of the entire record of proceedings under review, including such evidence as may have been heard by it and the findings and decisions made by it. By order of court or by stipulations of all parties to the review, the record may be shortened by the elimination of any portion thereof.

(3) Record after Remand. If the cause is remanded to the administrative agency and a review shall thereafter be sought of the administrative decision, the original and supplemental record, or so much thereof as shall be determined by court order or the stipplation of all the parties, shall constitute the record on review.

Section 9. [Scope of Review.]

(1) Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed.

(2) The hearing and determination shall extend to all questions of law presented by the entire record before the court. If the agency has afforded to the affected party an opportunity to present testimony, questions of fact may be overturned only in the event of patently arbitrary and capricious agency action. Where no such opportunity to present testimony has been afforded, questions of fact are fully reviewable.

Section 10. [Powers of the Court.]

(1) The Court shall have power:

(a) with or without requiring bond, and before or after answer is filed, upon notice to the agency and for good cause shown, to stay the decision of the administrative agency in whole or in part pending the final disposition of the case;

(b) to make any order that it deems proper for the amendment, completion, or filing of the record of proceedings of the administrative agency;

(c) to allow substitution of parties by reason of marriage, death, bankruptcy, assignment, or other cause;

(d) to dismiss parties or to realign plaintiffs and defendants;

(e) to affirm or reverse the decision in whole or in part;

(f) where a hearing has been held by the agency, to reverse and remand the decision in whole or in part, and, in such case, to state the questions requiring further hearing or proceedings, and to give such other instructions as may be proper;

(g) where a hearing has been held by the agency, to remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it shall appear that such action is just;

(h) in case of affirmance or partial affirmance of an administrative decision which requires the payment of money, to enter judgment for the amount justified by the record and for costs, upon which execution may issue as in other cases.

(2) Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for reversal of the administrative decision unless it appears to the court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him.

(3) On motion of either party, the court shall make findings of fact or state the propositions of law upon which its judgment is based.

Section 11. [Appellate Review.]

(1) Any final decision, order, judgment, or decree entered pursuant hereto may be appealed as in other civil cases.

Section 12. [Effective Date.]

(1) The provisions of this Act are applicable only to such actions as may arise after the effective date hereof.