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THE EXTENT OF THE FINALITY OF COMMISSIONS' RATE REGULATIONS*

BY THOMAS PORTER HARDMAN**

Within the last few years we have been witnessing what an eminent judge has characterized as "a legislative indictment of the courts."1 Through legislative action, both state and federal, the function of determining disputed questions has, in numerous classes of cases, been either taken from the courts and imposed upon commissions, or imposed upon commissions in the first place; and not only is the determination of the commission made without regard to many of the strict rules of evidence and procedure observed by the courts, but often the determination is (as far as it can constitutionally be made so) either final, i. e., without a right of review by the courts, or with a very limited right of review. It was inevitable of course that such a change in the method of administering justice should involve a change in the judicial process, e. g., in regard to the finality of commissions' rate regulations; but few were prepared for the change which might, with considerable justification, be characterized as a judicial indictment of the commissions.

The question of the finality of commissions' rate regulations has rather recently been before both the Supreme Court of the United States and the highest courts of several states; but the question has not always received the same answer. For example, in the leading West Virginia case, United Fuel Gas Co. v. Public Service Commission,2 in which it was contended that a rate fixed by a commission deprived the utility of property without due process, the West Virginia Supreme Court of Appeals held that, as a rate regulation involves legislative action, not judicial action, the court had no power to substitute its judgment for that of the commission.

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* The writer wishes to acknowledge his indebtedness to Dean Henry Craig Jones, College of Law, University of Illinois, for much of the material used in writing this article.
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2 73 W. Va. 571, 80 S. E. 831 (1914).
in a matter purely legislative or administrative. Accordingly the court held in substance—and there are other decisions to the same effect— that, in the absence of a claim of a want of jurisdiction, a court will not review a commission’s rate regulation further than to determine whether the regulation was “based upon a mistake of law” (including apparently in a question of law the question whether there was competent evidence upon which the regulation could reasonably have been based). On the other hand the United States Supreme Court has recently held that in such cases due process of law requires a right to a court review in which the reviewing court must be allowed to exercise an “independent judgment as to both law and facts.”

Before analyzing our problem with reference to the soundness of these opposing decisions, it will be useful to compare this class of decisions with another class of decisions dealing with the finality of commissions’ determinations. A typical example of the other class of cases is City of Charleston v. Public Service Commission. There a customer of a public utility instituted a proceeding before the West Virginia Supreme Court of Appeals for relief from a rate regulation of the West Virginia Public Service Commission. The customer contended, inter alia, that the value of the utility, as fixed by the commission, was too high. Not only was there no claim of a want of jurisdiction or abuse of discretion just as in the other class of cases, but, by way of dissimilarity, there was no claim of unconstitutionality. The court held in effect that it would not review the commission’s determination further than to ascertain whether there was competent evidence upon which the determination could reasonably be based.

Now, with respect to the question of the finality of administrative determinations, it would seem to need no argument to show that there is, or may be, a material difference between these two classes of cases, i. e., cases, on the one hand, in which it is contended that the rate regulation violates a constitutional requirement, e. g., due process of law, and cases, on the other hand, in which there is no contention that the determination violates the Constitution. There is admittedly a great saving in leaving to the commissions the final decision of the special questions which the legislatures

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* See, e. g., Clarksburg Light & Heat Co. v. Public Service Commission of West Virginia, 84 W. Va. 638, 106 S. E. 511 (1919), where the court said that in such cases a commission’s valuation for purposes of rate regulation is “conclusive where it depends upon the ascertainment of results from disputed facts.” Ben Avon Borough v. Ohio Valley Water Co. (No. 1), 250 Pa. 255, 103 Atl. 744 (1918); Hocking Valley Ry. Co. v. Public Utilities Commission of Ohio, 92 Ohio St. 362, 110 N. E. 952 (1915).


* 84 W. Va. 536, 103 S. E. 673.
have, for reasons of efficiency, either taken away from the courts and committed to the commissions or specially committed to the commissions in the beginning. The commissions, through training and experience in their limited fields, have acquired an expert character to which the ordinary court, a sort of general practitioner, cannot hope to attain.\(^6\) Hence, in cases in which there is no contention that the action of the commission has violated the Constitution, it would be presumptuous on the part of the courts to review the determinations of commissions to the extent of exercising an "independent judgment as to both law and facts," \(i.e.,\) in effect, of substituting the opinion of the courts for that of the commissions, unless, of course, there was a legislative or constitutional authorization for such an extensive review. Accordingly, it is pretty well settled that in regard to this class of cases the courts, in the absence of a claim of a want of jurisdiction, will not review a commission's determinations of fact further than to ascertain "whether there was substantial evidence to sustain the order" of the commission.\(^7\) The respect "due to the judgment of a tribunal appointed by law and informed by experience"\(^8\) requires the courts to accord at least this margin of finality to the rate-making determinations of commissions.

But where the commission's determination, either in regard to substance or procedure, is alleged to have violated some constitutional requirement, the courts must of course review the commission's determinations to the utmost extent demanded by the constitutional requirement. The question, then, is: To what extent does the Constitution require that there shall be a court review, or a right to a court review, of the rate-making determinations of commissions in cases in which it is contended that the determination violates some constitutional requirement? In the latest adjudication of the United States Supreme Court in regard to this question it was held, as we have seen, that the due-process clause requires a court review, or right to a court review, in which the reviewing court must be allowed to exercise an "independent judgment as to both law and facts."\(^9\) Said the court, \textit{per} Mr. Justice McReynolds:


\(^7\) Mill Creek Coal, etc. Co. v. Public Service Commission, 54 W. Va. 662, 100 S. E. 557 (1919); Interstate Commerce Commission v. Union Pacific R. Co., 222 U. S. 541, (1912). See \textit{Beale & Wyman, op. cit.}, § 1134.

\(^8\) Illinois Central etc. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 454 (1907).

"If [as in this case] the owner claims confiscation of his property will result [from the commissions' rate-making order] the state must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due-process clause."\(^{10}\)

Justices Brandeis, Holmes and Clarke dissented on the ground, \textit{inter alia}, that, in this respect, the due-process clause does not require a right to a court review except to the extent of ascertaining whether there was evidence on which the commission's determination, a valuation, could reasonably have been based. This dissent is, it will be remembered, substantially to the same effect as the above mentioned decision of the West Virginia Supreme Court of Appeals in United Fuel Gas Co. v. Public Service Commission, \(^{11}\) and the other decisions mentioned therewith as being in accord. In the West Virginia case in which the contention of unconstitutionality was the same as in the United States Supreme Court case, the West Virginia Supreme Court of Appeals said:\(^{12}\)

"Is it to be presumed that the legislature intended to invest in this court jurisdiction on review by original or other process to substitute its judgment for that of the commission? We cannot so hold. The Court might perhaps differ from the commission on the same state of facts, acting within its limited knowledge of the subject, as to what would be right and just in a particular case, but would that justify suspension or nullification of the order of the commission? The statute ought not to be so construed. As was said by the [United States] Supreme Court in Louisville & N. R. Co. v. Garrett, \textit{supra},\(^{13}\) 'the rate making power necessarily implies a range of legislative discretion; and, so long as the legislative action is within its proper sphere, the courts are not entitled to interpose and upon their own investigation of traffic conditions and transportation problems to substitute their judgment with respect to the reasonableness of rates for that of the legislature or of the railroad commission exercising its delegated power'."

Yet such an independent court review, though thus condemned by the United States Supreme Court and by several state courts, is practically what the United States Supreme Court held in its recent decision to be not only permissible but positively required

\(^{10}\) Id. at p. 239.
\(^{11}\) \textit{Supra}, note 2.
\(^{13}\) 231 U. S. 298, 313 (1913).
by the Constitution. Of course, the United States Supreme Court is the ultimate arbiter of this question, but it has several times decided the general question otherwise in regard to very similar administrative determinations, and if its recent decision is to stand, it is necessary to throw into the waste basket much that has been regarded as more or less settled with respect to the finality of commission’s determinations; and this, together with the vigorous dissent in the case, is sufficient to justify an extended consideration of the soundness of the decision.

With reference to the question thus raised, a writer in a very instructive article in a recent issue of the Harvard Law Review has proposed the following answer:

“"It is submitted that the ultimate solution of the problem as to the extent of review which must be accorded depends on the question whether an administrative rate-regulating order shall for purposes of review and of application of the due-process clause be treated on the analogy of a judicial decision or of a legislative act. . . .

"If administrative rate regulation be regarded as an application of law, the theory of review should be that it is to determine the correctness on law and fact of the actual administrative decision.

"If administrative rate regulation be regarded as a making of law the theory of review should be that it is to determine whether the administrative acted within its jurisdiction when it laid down the ruling.

"It does not seem necessary to consider any possible third category. A ruling authoritatively laid down and given legal sanction must be regarded either as a making or as an application of law."

But isn’t there a “third category”? Is it true that “a ruling authoritatively laid down and given legal sanction must be regarded either as a making or as an application of law”? And must a court in reviewing such “a ruling” of a commission necessarily follow either its theory as to reviewing an application of law (judicial decisions), or its theory as to reviewing a making of law (legislative action)? In order to answer these questions adequately it is necessary to determine, if possible, the exact nature of the action of a commission in making a rate regulation. Is a commission’s rate regulation necessarily either exclusively legis-

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14 These “similar administrative determinations” are discussed later in the body of the article.
lative (a making of law), or exclusively judicial (theoretically an application of law, though the courts do in fact make law), or exclusively executive? Or is it a practical union of more than one of these functions? Most courts say it is legislative.18 Some say it is judicial.17 And there is even some sanction for the view that it is executive.18 The last mentioned writer says that while, "from the historical point of view rate regulation is legislative in character... on such a functional differentiation [as the one herein considered] rate regulation should be classed as judicial in character."19 Mr. Wyman in his well-known book on public service corporations says:20

"The function [of a commission in making rate regulations], while not judicial, is not in the strict sense legislative. If it is necessary to find a place for the regulating power in one of the three departments into which government is commonly divided it undoubtedly forms part of the executive department. It does not involve the power to make laws, or to interpret and apply them, but to aid in carrying the law into effect."

With the greatest deference it is submitted that all of these views are unsound, or sound only to a certain extent. An element of error in most, if not all, of these views, lies in more or less tacitly assuming, to some extent at least, that, under the doctrine of the separation of powers, governmental action, such as that in question, is exclusively either legislative, executive or judicial. The doctrine of the separation of powers, however, though embodied in our constitutions,21 does not rigidly apply to all cases.

18 People ex rel. Central Park etc. R. Co. v. Wilcox, 194 N. Y. 383, 87 N. E. 517 (1909).
19 See 2 Wyman, Public Service Corporations, § 1404. Some say that a rate regulation is "administrative." But it is not very clear just what is meant by this term in this connection. See, e. g., 2 Wyman, op. cit., § 1404. The section is headed: "Power to regulate is administrative"; but in the body of the section the author says it is "executive." See United Fuel Gas Co. v. Public Service Commission, supra, note 2, in which it is said that a rate regulation is legislative, but in which the word "administrative" is subsequently used apparently with reference to the rate regulations of the commission.
20 Lawrence Curtis, 2d, op. cit., at p. 878.
21 2 Wyman, op. cit., §§ 1403, 1404.
22 The West Virginia constitution has very specific provisions as to separation of powers. Article V, which is devoted exclusively to this subject, is as follows: "The Legislative, Executive, and Judicial Departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the Legislature." Article VIII, § 1 provides: "The judicial power of the state shall be vested in a supreme court of appeals, in circuit courts and the judges thereof, in such inferior tribunals as are herein authorized and in justices of the peace." Thus, the appellate and original jurisdiction of the Supreme Court of Appeals is definitely delimited and clearly includes only "judicial" questions. The Public Service Commission does not fit the specifications given for the inferior tribunals which the legislature is authorized to create.
For example, our legislatures exercise some judicial functions and our courts exercise some legislative functions. As is said in Willoughby on the Constitution, the doctrine of the separation of powers applies only "so far as the requirements of efficient administration will permit." And it would seem that the practical "requirements of efficient administration" do not, under present-day conditions, permit a rigid separation of powers in the making of rate regulations by modern public service commissions.

Now, whether or not the constitutional provisions as to the separation of powers should properly be construed as preventing commissions from exercising more than one of these so-called "powers," if the courts do in fact permit the commissions to exercise more than one of these powers, then the commissions may exercise more than one of these powers, the doctrine of the separation of powers to the contrary notwithstanding, for in law as elsewhere actions speak louder than words or mere doctrines.

Now, we know that the courts do in fact permit commissions in a single proceeding (in which there are notice and hearing and a proceeding substantially the same as an ordinary court proceeding) to determine the reasonableness of a rate and simultaneously to establish the thus-determined rate as the rule for the future. The question, therefore, is: On the assumption, which must be accepted, that the doctrine of the separation of powers is inapplicable, is such a rate-making determination either exclusively legislative, exclusively executive or exclusively judicial? If we look the facts thus boldly in the face and fearlessly call an ace an ace, doesn't such a determination, in a practical sense, involve both legislative and judicial action, and, to some extent, executive action? It has been well said that this is a practical age, that it demands not only practical decisions but practical reasons to support them. As Dean Pound has put it: "Law is a practical matter." As a practical matter, then, doesn't a modern com-

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Under these circumstances it is very natural that the power of the Supreme Court of Appeals to review the determinations of the Public Service Commission should be challenged in the very first case in which the Supreme Court of Appeals was asked to pass upon an order of the Commission, United Fuel Gas Co. v. Public Service Commission, supra, note 2. The extent to which the court actually does review such determinations is discussed in the body of the article.

22 E. g., "the judicial powers of impeachment, and of judging of the qualifications of its own members." 2 Willoughby, Constitution, § 742.

23 E. g., the "power to establish rules of practice and procedure." 2 Willoughby, op. cit., § 742.


mission's rate regulation involve a practical union of all three of these functions?

Let us consider briefly and generally how a modern commission's rate regulation is made. By the modern27 method the commission's proceeding in rate making is, in most respects, essentially like an ordinary court proceeding.28 Not only is there notice but there is a hearing on the question of the reasonableness of the rate; and if the commission finds the rate reasonable it establishes the rate as the rate or rule for the future. Now, if we analyze what the commission has done we find that it has done three essentially different things. In the first place the final act of the commission is the establishing of a rule for the future, and to the extent that the commission merely does that the rate regulation is rather legislative than judicial, for, differing from what is commonly considered judicial action, viz., determining the jural relations of contestants as they stand on present or past facts,29 it lays down a rule to be applied to future facts,30 though as pointed out by the New York Court of Appeals in a case holding such action judicial:31

"The function of prescribing a rate is [not] necessarily non-judicial solely because it enforces a rule of conduct for the future. It is true that 'A judicial inquiry investigates declares and enforces liabilities as they stand on present and past facts under the laws supposed already to exist.' But a judicial decision often determines in advance what future action will be a discharge of existing liabilities or obligations. A notable instance of this is the specific enforcement of contracts which are to extend over a long period of time, in which the court may dictate the details of performance."

Perhaps it is impossible to give an all-comprehensive definition

27 By the earlier method, commissions sometimes proceeded without notice or hearing. See Chicago, Milwaukee etc. Ry. Co. v. Minnesota, 134 U. S. 418, 457 (1890), where the court says with reference to the Minnesota railroad commission's rate making: "No hearing is provided for, no summons or notice to the company before the commission has found what it is to find and declared what it is to declare, no opportunity provided for the company to introduce witnesses before the commission, in fact, nothing which has the semblance of due process of law." As a matter of fact the Minnesota statute seems to have provided for a hearing, but the provision was ignored.

28 See Beale & Wyman, Railroad Rate Regulation, 2 ed., §§ 1106, 1107, 1108, 1109.

29 See 2 Willoughby, op. cit., § 744, quoting with approval the following from the dissenting opinion of Field, J., in the Sinking Fund Cases, 99 U. S. 700, 761 (1878): "The distinction between a judicial and a legislative act is well defined. The one determines what the law is and what the rights of parties are, with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it."

30 See note 29.

31 People ex rel. Central Park etc. R. Co. v. Willcox, supra, note 17, at p. 385.

32 But see Mr. Justice Holmes in Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 226 (1908).
FINALITY OF COMMISSIONS' RATE REGULATIONS

of what constitutes judicial action as distinguished from legislative action. Perhaps the line of demarcation, as in the case of what constitutes due process, must be pricked out by the process of inclusion and exclusion, by the gradual approach and contact of the decisions. There seems to be no definite line of demarcation between the two functions. What is judicial action depends largely on what the courts, for practical reasons, see fit to call judicial action.

For practical reasons, then, should a rate regulation of a commission be regarded as judicial? At common law the courts always passed upon the reasonableness of rates fixed by a public utility, e.g., in cases of alleged overcharging. If the court found the rate reasonable the court enforced it in that case. Now, partly, perhaps, because of the influence of the doctrine of laissez faire, partly, perhaps, because of the traditional conservatism of the courts, partly, doubtless, for practical and other reasons the courts, as a matter of fact, did not go further and lay down the rate thus found reasonable as the rate to be thereafter charged, i.e., as a rule for the future. Still, if the courts, rightly or wrongly, had laid down the rate which they found reasonable as the rate to be followed as "a rule for the future" wouldn't the court's action have been quite analogous to well-recognized examples of judicial action, e.g., a mandatory injunction? But be that as it may, there is another aspect of a rate regulation which, in a practical sense, more closely resembles the well-recognized examples of judicial action than the well-recognized examples of legislative action. Thus, the making of a rate by the modern commission involves a contemporaneous determination by the commission that the rate which it establishes is a reasonable (and non-confiscatory) rate. And it is submitted that the commission's determination of the reasonableness of its rate is, in a practical sense, a judicial determination; for such a determination by a commission is practically indistinguishable from the determination by a court of the reasonableness of a rate fixed by a commission or by a statute or by the utility; and it is well settled today that such a determination by a court is a proper exercise of the so-called judicial function. In the very nature of things the practical character of an act cannot be changed by changing the name of the actor from court to commission. And, as we have seen, a modern commission's pro-

33 Id.
ceedings in such cases are substantially like an ordinary court proceeding. Of course it is commonly said, as the United States Supreme Court said in the well-known Prentis Case, that the final act in a commission’s rate making is legislative, that “the nature of the final act determines the nature of the previous inquiry” and that therefore the determination by a commission of the reasonableness of its rate “cannot be judicial in the practical sense, although the question considered [by the commission] might be the same that would arise in the trial of a case [by a court].” But, if, as the Supreme Court admits, “the question considered” by a commission in determining the reasonableness of its rate is “the same that would arise in the trial of a case [by a court],” how can it be said, as the Supreme Court said, that the commission’s determination “cannot be judicial in the practical sense”? As Mr. Chief Justice Fuller said in his dissenting opinion in that case:

“I cannot see why the reasonableness and justness of a rate may not be judicially inquired into and judicially determined [by a commission] at the time of the fixing of the rate, as well as afterwards.”

Furthermore, to some extent at least, a commission’s rate regulation is, in one aspect, executive in character. Thus, a commission may generally establish a rate only in cases in which it finds that the rate in force is unreasonable; and, since it is general law that a rate must be reasonable, a commission’s action in fixing a rate, in one aspect, simply aids in carrying into effect the general law that the rate enforced must be a reasonable rate.

Differing slightly from the view herein expressed, but at the same time recognizing that the West Virginia Public Service Commission exercises legislative, executive and judicial functions, the West Virginia Supreme Court of Appeals has made the following pertinent observation:

“In so far as they [the West Virginia Public Service Commissioners] are empowered to investigate rates and charges of public service corporations, and to determine their reasonableness, they would seem to be performing a quasi judicial function, while, in ascertaining what is a just rate for services to be rendered by such corporations, and prescribing such

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Prentis v. Atlantic Coast Line Co., supra, note 32.

Id., at p. 227.

Id., at p. 237.

See, supporting this view, 2 Wyman, op. cit., § 1404.

rate, as a rule to be obeyed in the future, their action would seem to partake somewhat of a legislative character; and in compelling obedience to its orders, by proper proceedings in court, as sec. 5 of the act creating it requires it to do, its duties are ministerial, coming clearly within the functions of the executive department of government."

Accordingly, it is submitted that a rate regulation of a modern commission is in one aspect legislative in character, in another aspect judicial, and in another aspect executive. In other words a rate regulation of a modern commission involves a practical union of these three functions. If this is correct, then, of course, it cannot be said, as we have seen it has been said, that "a ruling authoritatively laid down and given legal sanction must be regarded either as a making or as an application of law," and consequently that "the extent of review which must be accorded depends on the question whether an administrative rate-regulating order shall for purposes of review and of application of the due-process clause be treated on the analogy of a judicial decision ['an application of law'], or of a legislative act ['making of law']"

On the contrary, since, as Dean Pound has put it, "law is a practical matter," and since the "ruling" to be reviewed, a rate regulation, is, as a practical matter, a composite of those two functions and, also, of a third function, a court, in reviewing such a composite ruling, should follow that one of those two methods of review, or that composite part of those two methods of review (or even that independent method of review) which, as a practical matter, will "secure as many interests as may be without as little sacrifice of other interests as may be," for such a securing of interests is the end of law and, therefore, the end of all judicial review.

Now, what are the essential "interests" here involved, the in-

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40 See also, State v. Baltimore etc. R. Co., 76 W. Va. 399, 408, 85 S. E. 714 (1915) where the court says that the powers exercised by the West Virginia Public Service Commission are "quasi-legislative and quasi-judicial and administrative in character." Cf, State v. Tucson Gas etc. Co., 15 Ariz. 294, 138 Pac. 761 (1914) where the court said that the public service commission of that state exercised "not only legislative but the judicial, administrative and executive functions of the government. While it is not so named, it is, in fact, another department of government [i. e., a fourth department of government]."


43 See Roscoe Pound, "The End of Law as Developed in Legal Rules and Doctrines," 27 Harv. L. Rev. 195; Roscoe Pound, "The End of Law as Developed in Juristic Thought," 27 Harv. L. Rev. 605; id., 30 Harv. L. Rev. 201; Roscoe Pound, Outline of A Course On the History and System of the Common Law, 1, 5; GAREIS, SCIENCE OF LAW (Koscharek's trans.), 29-35. Of course there are other theories as to the end of law, and of course the end of law, in the earlier stages of legal development, is quite different. See Roscoe Pound, "The End of Law as Developed in Legal Rules and Doctrines," supra.
terests to be secured or sacrificed by judicial review or reviews? Sufficiently for present purposes there is the individual interest of the utility that it shall not be deprived of its "substance" arbitrarily or unjustly (without due process of law). Then, though the utility is claiming that the rate is confiscatory, there is the interest of the utility's patrons that the rates shall not be either unreasonably high or so unreasonably low as to deteriorate the service. And there is the interest of the state that one of the state's governmental agencies, viz., the courts, shall not do work already done by another of the state's governmental agencies, that other being an expert commission specially designed and authorized by the state to do that work. And there is the interest of the state that its courts shall not be unduly used for an unreasonably prolonged series of trials of the same cause.

With reference apparently to the state's interest in such matters the United States Supreme Court said (in holding that it would not grant an independent court review of a valuation made by a commission for purposes of taxation, although the commission's valuation was claimed to be unconstitutional): 45

"[The commission of valuers] was created for the purpose of using its judgment and its knowledge . . . . Within its jurisdiction, except as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The State has confided those rights to its protection and has trusted to its honor and capacity, as it confides the protection of other social relations to the courts of law. Somewhere there must be an end."

So, "somewhere there must be an end" in determining the constitutionality of a commission's rate regulation, or valuation for purposes of rate regulation, for the later was the precise question raised in the recent United States Supreme Court case. 46 Shouldn't there be an end before the commissions in rate valuations to the same extent that the Supreme Court has said there should be an end there in regard to the constitutionality of valuations for purposes of taxation, 47 and for purposes of condemnation? 48 If not there, where is the end to be? Is there to be no end until the United States Supreme Court is called upon to determine whether

44 For a classification of the "interests" to be "secured" by law, see Roscoe Pound, OUTLINES OF LECTURES ON JURISPRUDENCE, 2 ed., 56-59.
the commission's rate valuation is confiscatory? It has been intimated that this is so, and that under the majority view of the Supreme Court's recent decision the Supreme Court itself may ultimately be faced with the troublesome problem of determining whether the rate valuation is so low as to constitute a deprivation of property without due process.\(^4\) It may be that this intimation is without justification, but however this may be, if the United States Supreme Court enforces its recent decision, the enforcement will tend to make commissions unduly timid and conservative, and, perhaps, antagonistic to the courts. And this, of course, would not be conducive to the fairest and most efficient administration of justice.

Now, here, as generally in the law, the administration of justice in a given case involves a compromise of conflicting interest. And upon a balancing of the conflicting interests involved, in order to "secure as many interests as may be with as little sacrifice of other interests as may be" (for this, as we have seen, is the end of law), it would seem that the end of law is best subserved by according to a commission's fact-findings, such as valuations, in rate cases at least the degree of finality accorded by courts to the fact-findings of commissions in cases of valuations for purposes of condemnation\(^5\) and for purposes of taxation\(^6\) and for some other purposes.\(^7\) As was said by the United States Supreme Court in a case dealing with the finality of a valuation made by a commission for purposes of condemnation, a case in which it was alleged that the commission's valuation deprived a party of property without due process: \(^8\)

"It may be true, as contended, that, as construed by the

[New York] Court of Appeals, the determination of the com-

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\(^4\) Lawrence Curtis, 24., op. cit., supra, note 19, at p. 876.
\(^5\) See case cited in footnote 48.
\(^6\) See particularly New York & Queens Gas Co. v. McCall, 245 U. S. 345 (1917). In that case in which an order of a public service commission required a public utility to extend its lines into new territory, it was contended that the extension would not produce an adequate return and that, therefore, the commission's order deprived the utility of property without due process of law. But the United States Supreme Court, after reviewing the cases, said (pp. 348, 351): "It is the result of these and similar decisions that . . . this court . . . will not analyze or balance the evidence which was before the Commission for the purpose of determining whether it preponderated for or against the conclusion arrived at, yet it will, nevertheless, enter upon such an examination of the record as may be necessary to determine whether the federal constitutional right alleged has been denied, as, in this case, whether there was such a want of hearing or such arbitrary or capricious action on the part of the Commission as to violate the due-process clause of the Constitution."

We agree with the Court of Appeals of New York in concluding that the action of the Commission complained of was not arbitrary or capricious, but was based on very substantial evidence, and therefore that, even if the court differed with the Commission as to the expediency or wisdom of the order, they are without authority to substitute for its judgment their views of what may be reasonable.

\(^7\) Long Island Water Supply Co. v. Brooklyn, supra, note 49.
missioners is conclusive as to the mere value of the property, but there is no denial of due process in making the findings of fact by the triers of facts, whether commissioners or a jury, final as to such facts, and leaving open to the courts simply the inquiry as to whether there was any erroneous basis adopted by the triers in their appraisal, or other errors in their proceedings.7

In short, a court, in the absence of a claim of a want of jurisdiction, should not review such administrative determinations further than to ascertain whether the commission acted arbitrarily or applied some fundamentally wrong principle. A review to that extent is essential in order to safeguard the various interests involved against that infringement of fundamentals which we condemn as a denial of due process. But with that limitation it would seem that the practical requirements of efficient administration demand that there should be an end of such matters before the commissions.55

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7 This, prior to the Supreme Court's recent decision, was generally considered to be the correct view. See Mr. Justice Holmes in Chicago, Burlington etc. Ry. Co. v. Babcock, supra, note 46. See also cases cited in footnotes 47, 48 and 52.