

1944

Report of Committee on Post-War Legal Problems

Minn. L. Rev. Editorial Board

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Recommended Citation

Editorial Board, Minn. L. Rev., "Report of Committee on Post-War Legal Problems" (1944). *Minnesota Law Review*. 2622.
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REPORT OF COMMITTEE ON POST-WAR LEGAL PROBLEMS

TO THE MINNESOTA STATE BAR ASSOCIATION

The matters assigned to this committee were the following:

- I. Practice of Administrative Law
- II. Post-War Placement of Lawyer Veterans
- III. International Organization as a Means of Effecting and Maintaining Peace
- IV. Centralization of Government and Statism.

The required study of each problem made it necessary that a subcommittee be appointed on each. The reports of the subcommittees were submitted to the entire membership which concurs wholly in each subcommittee report except where following the subcommittee report there appear concurrences with reservations and dissents. The recommendations and reports of the subcommittees appear separately, but the composite report is the report of the committee.

Subcommittee Report on *Practice of Administrative Law*.

David Shearer, Chairman

T. O. Streissguth

William Prosser

H. R. Pfeiffer

J. H. Manion

RECOMMENDATIONS

Your committee recommends:

1. That the Bar continue to hold institutes upon the practice of administrative law, as part of its service to its membership. That these courses should be increased in number and scope and given in various sections of the state wherever local interest warrants.

2. That the Bar Association should consider whether it would not be advisable to require the study of administrative law in all accredited law schools as a prerequisite to a degree.

REPORT

Your committee makes note of the immense increase in the number of administrative boards and tribunals. While much of this development may be due to the war emergency, it is felt that it has become such a settled method of governmental procedure that it is unlikely that the tendency will be reversed for the indefinite future. For this reason the lawyer should realize that he must prepare himself to deal competently with this aspect of the practice of his profession.

Critics of the method of government by administrative boards suggest that it tends to depart from the settled procedures which have been established in the law for the protection of individual rights. It may be suggested that the presence of the trained lawyer practicing before administrative boards and tribunals will have the same salutary effect upon the body of administrative law that his participation as an officer of the court has had in the more traditional administration of justice by the courts. The committee believes that practicing lawyers and those who return to practice from the armed services have a public and private duty to fit themselves to act competently in this field.

The committee is impressed with the favorable reaction of the Bar generally to the Institutes on special subjects, such as Taxation, which have been given by the University of Minnesota under the auspices of our Association. It is informed that the Law School at the University of Minnesota makes the study of administrative law a required subject for its law degree. It believes that a knowledge of the constitutional and procedural principles

involved in administrative law should be a required part of the training of all law students and that the Bar and public would be well served by the continuance of the present Institutes and an increase in their number and scope to cover the whole field. No training can be a substitute for actual experience, but it is believed that due emphasis can be placed upon the practical aspects of the practice of administrative law both by the law schools and in such institutes as are given.

The committee feels that more practicing lawyers could and would avail themselves of opportunities for continuation study if the Institutes could be offered in various districts and sections of the state where sufficient interest is apparent.

Subcommittee Report on *Post War Placement of Lawyer Veterans*.

James E. Carr, Chairman
Neil M. Cronin
F. C. McGivern

RECOMMENDATIONS

Your Committee recommends

1. That the District Bar Associations communicate with those in the service advising them of our wish to assist in finding openings for them upon their being discharged, and that a questionnaire, a sample copy of which is attached hereto, as Exhibit "A", or one similar thereto be sent to each of the men in the service with the request that it be filled out and returned to the District Association.

2. That the lawyers in each district be circularized to determine how many lawyers are needed in each district and that a questionnaire, Exhibit "B", attached hereto or one similar thereto, be used to secure this information. The information should be kept by the secretaries of the district associations or a special committee might be appointed in the larger cities with a special veterans' placement chairman for this purpose. Returning lawyers upon discharge could then be referred to the proper bar official who has the information concerning available vacancies and contact with the law office or the location where an opening is available could be made with least possible delay.

3. That special consideration be given to lawyers wounded or disabled in the service and that suitable publicity be given in the Bench and Bar so it would become generally known who in each district is handling the placement of these returning veterans.

4. That part time or individual case work might be referred to returning veterans by busy lawyers where lawyer war veterans open offices of their own but are not sufficiently busy to have all of their time occupied. Veterans willing to handle this work can be determined and their names made available through the district placement office.

5. That a statistical survey be made throughout the state if feasible which would disclose the decrease in lawyer and civil population in each city and county since the beginning of the war. This would give information as to localities where there was an apparent shortage of lawyers on the basis of the number practicing before the war as compared to the present and would give an index of population trends, that should be of value.

REPORT

The committee is of the opinion that the Minnesota State Bar Association and the District Bar Associations can and should assist returning veterans to find openings where they desire to return to the practice of law.

EXHIBIT "A"

MINNESOTA STATE BAR ASSOCIATION
DISTRICT PLACEMENT PROGRAM FOR LAWYER VETERANS

..... DISTRICT
Preliminary Placement Study

I am in the My age years
(State Rank) (Branch of the Service)

I have been in active war service for years, months

I am single married. Have dependents
(not including wife)

I was admitted to the bar in, and at the time of
entering service, had practiced law years at

..... Alone In association with other
lawyers, as a full-time employee of
My annual net income from practice or other employment was approxi-
mately \$.....

Race Nationality Religion Politics

Date admitted to the bar Where admitted
On completion of war service and return to civilian life, I plan:
(check)

.....To re-enter law practice: Alone With former associates

.....To enter another occupation (specify)

.....In former location In new location
(State preference)

My greatest needs in returning to civilian life will include:
(check)

.....Finding employment (..... Legal, ornon-legal preferred?)

.....Finding new location in which to practice law.

.....Retraining (for legal, or other occupation?)

.....Re-equipping mylaw office, orlaw library.

.....
(State other needs, if any, not listed)

maintenance of a just and durable peace, and that the Association carry on a further study of those problems, especially of a constitutional and legal nature, involved in such an organization.

2. That the Minnesota State Bar Association at its annual meeting adopt the following resolution:

RESOLVED:

1. That the Minnesota State Bar Association favors the creation of an international organization with power adequate to establish and to maintain a just and lasting peace among the nations of the world, and favors participation by the United States therein through its constitutional processes.

2. That to that end the United States should seek the collaboration of its allies in immediately calling a meeting of representatives of the United Nations to form an organization of the United Nations with certain specific and limited powers:

(a) to establish procedures and machinery for peaceful settlement of disputes between nations.

(b) to provide for the formation and maintenance of a United Nations military force and to suppress by immediate use of such force any attempt at military aggression by any nation.

3. That the Association during the coming year carry on, and recommend to its regional associations that they carry on, discussions of the constitutional and legal problems involved in the establishment of such an organization, including, but without limitation,

(a) the basis of representation in such an organization,

(b) what, if any, limitations on or delegation of national sovereignty are necessary,

(c) the composition and control of an international military force,

(d) the nature of the machinery to be established for the peaceful settlement of international disputes,

(e) the adequacy or inadequacy of existing international law for the settlement of such disputes,

(f) the necessity for vesting legislative authority in the proposed international organization, with power to amend or supplement existing international law, if necessary, or to exercise such other legislative functions as may be necessary to accomplish the foregoing purposes.

REPORT

We believe that with increasing industrialization, with the great advances in transportation and communications, the world has grown smaller and the nations more interdependent. Aggression anywhere in the world has become a matter of concern to the United States. The attack on Manchuria, Ethiopia and Czechoslovakia, unopposed by the peace-loving nations, led inevitably to the attack on Pearl Harbor. The choice of the United States lies between (a) permanently arming to the teeth, regimenting its national life, risking the loss of its democratic institutions, extending its power throughout the world for its own defense, and thus becoming, in their eyes, a threat to

other nations; or (b) co-operating with other nations in a system of collective security.

The subcommittee unanimously believes that next to the winning of the war the problem most vitally affecting the future of the United States is that of establishing a just and lasting peace and that the United States must, willingly or not, in its own interests and for its own security, participate with other nations in the establishment of international machinery to that end.

We considered with much other material:

1. The Connally Resolution, adopted by the United States Senate November 5, 1943, by a vote of 85 to 5, which resolves that the United States

"acting through its constitutional processes, join with free and sovereign nations in the establishment and maintenance of international authority with power to prevent aggression and to preserve the peace of the world."

and which follows the language of the Moscow Declaration, reported to have been drafted by Secretary Hull, in recognizing the necessity of there being established

"at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security."

2. The Fulbright Resolution, adopted by the House of Representatives September 21, 1943, by a vote of 360 to 29, whereby the House of Representatives expressed itself as favoring

"the creation of appropriate international machinery with power adequate to establish and to maintain a just and lasting peace among the nations of the world and as favoring participation by the United States therein, through its constitutional processes."

3. Addresses and articles by leaders of the bench and bar, including those of Mr. Justice Roberts, Mr. Justice Rutledge, Judge Parker, Senior Judge, United States Circuit Court of Appeals, 4th Circuit, Senator Robert A. Taft, and Judge Phillips, Judge, United States Circuit Court of Appeals, 10th Circuit (mentioning only some which have been printed recently in the American Bar Association Journal, June and November, 1943, February, 1944). To quote but briefly from one or two of these recent addresses, Justice Roberts says:

"I believe that we have come to realize that we cannot, as a nation, live in isolation; to understand that, if we are to have the essentials of our free democratic way of life we must join other nations in means and methods to perpetuate world peace through world co-operation."

Senator Taft says:

"The plan for an enforced peace which accords most closely with the ideals of the American Republic, and of the Atlantic Charter, is that for an Association of Nations to include the United Nations and the Neutrals and, after a period of probation, the Axis nations. It would be supported by covenants between sovereign nations agreeing to determine their disputes by the law of nations and judicial decision or by arbitration. It would further be supported by covenants to join in the use of force against any nation determined to be an aggressor by the decision of some international tribunal. Frankly this is an obligation which the American people may be loath to undertake, but I believe they will undertake it, because they know that if war is not prevented at the start under modern conditions, it is more than likely to spread throughout the world."

4. The resolutions drafted by the Section on International and Comparative Law of the American Bar Association recently submitted to the Association's House of Delegates and referred by it to a special committee

for study and report at the American Bar Association annual meeting in September next, proposing that

"a permanent organization of the nations be established for the purpose of maintaining peace by legal sanctions and the suppression of aggressive war."

The subcommittee shares the sentiments expressed in several of the addresses above referred to, in the editorials of the American Bar Association Journal and in the resolutions submitted by that Association's Section on International and Comparative Law that the problem of international organization to secure a just and lasting peace, involving as it does the effort to establish a world of law and order, is one which should engage most earnestly the attention of members of our profession, both individually and in our organizations.

CONCURRENCES WITH RESERVATIONS AND DISSENTS

"The subject of post-war international organization is an enormous one—too big for a bar association committee to solve after a few meetings. In general, however, I agree with the conclusions and recommendations of the subcommittee on International Organization * * * My only dissent is that I doubt both the advisability and practicability of 'the formation and maintenance of a United Nations military force,' such as the committee recommends.

"The maintenance of a closely integrated international police force is one thing; cooperative international policing is another. If the report were modified so as to recommend an agreement between the United Nations that each will maintain its separate military and naval force to be used collaboratively to prevent aggression where necessity arises, I would join in the report. The present war has taught us that combined chiefs of staffs of separate armies and navies can work effectively together. Why go further than collective or collaborative action in creating an international police force for the future?"

T. O. STREISSGUTH

"I concur in the report with one qualification, and that is that I would add after Part B of the second resolution the following language: 'Provided that the sovereign rights of the United States of America be in no way limited thereby.'

"I realize that many may take the view that a limitation of this kind would possibly prevent a workable international organization being formed. I do not believe that such view is sound, but if it came to a choice between this country parting with its sovereign rights in order to be member of an international organization to be equipped with a military force I would prefer that this country stay out of such an organization. My reason for that is that this nation has not shown during its history any desire to be an aggressor or to use military force in the subjugation of other states, and I do not think we should join in any organization which would tie the hands of our own country when its purposes proven by its history have always been peaceful. We certainly cannot say that for the other countries which would be asked and expected to join such an international organization, and I am fearful that if a combination of foreign states had a measure of control over our country it would be used to our detriment.

"I realize that this subject is one which is not easy of solution. I feel that we can and should make an effort to form some kind of international organization which will have as one of its purposes the establishment of just and peaceful relations among the nations of the world, but I do not think that in joining such an organization we should ever submit to any plan by which we may become involved

in the many bitter and historical feuds between many European nations, each of whom might attempt to use such an international organization to further its own particular ends."

H. R. PFEIFFER

"Although I consider that the creation of an international organization such as is referred to in paragraph 1 of the proposed resolution is desirable, I am not prepared to state unqualifiedly that I favor the creation of such an organization without complete information on the various points referred to in paragraph 3 of the proposed resolution.

"I suggest that paragraph 1 of the proposed resolution be amended by inserting after the word 'favors' in the first line, the words 'the principle of.'"

WENDELL ROGERS

Save for the foregoing dissents and reservations, all members of the committee have concurred in the foregoing subcommittee report except Mr. F. C. McGivern who has reserved his expression.

Subcommittee Report on *Centralization of Government and Statism*.

Clifford E. Enger, Chairman

John A. Weeks

Wendell O. Rogers

Chester L. Nichols

Urban J. Steimann

RECOMMENDATIONS

Your Committee recommends:

1. Continued active support by the Bar of all measures and activities which may assist in the successful prosecution of the war.
2. Dissolution of all war-time and other emergency bureaus as soon as possible after the termination of hostilities.
3. The limitation of federal activities to constitutional fields, decentralization of government, recognition of the doctrine of separation of powers, and re-establishment of a system of free enterprise.
4. The segregation of legislative, executive and judicial functions, at the same time recognizing the necessity for proper growth and development of administrative agencies.
5. Adoption of the proposed Administrative Procedure Act as approved by the House of Delegates of the American Bar Association.
6. Stability and simplicity in the law and in its administration.
7. That the Bar do everything in its power to explain the original nature and purpose of our form of government, its effect upon our phenomenal growth and development as a nation, and the long-range stultifying effect of the adoption of a highly centralized and paternalistic form of government.

REPORT

This subcommittee was assigned to study and report on Centralization of Government and Statism, with the suggestion that special consideration be given such matters as states' rights, development and perpetuation of bureaucracy, stability in the law, the preservation of private enterprise, the obligation of the Bar to instruct the public as to our form of government, the purposes of that form, and the desirability of maintaining it.

Our government was formed by men who through long and bitter experience had come to know the dangers of a highly centralized government and who cherished above all else the rights of individuals and free enterprise. So firmly entrenched were these principles that it was often a serious question in the formative stage of our government whether any federal government worthy of the name ever could be organized. As finally organized, only limited powers were granted to the federal government, and the exercise of those so granted was carefully safeguarded through the creation of separate legislative, executive and judicial departments.

Under this system, based on individual rights and free enterprise, our country developed, prospered and became the greatest nation in the world. This success, in our opinion, is directly attributable to our system of government and not to our great natural resources as so often claimed. A comparison of our success and progress with that of other countries endowed with even greater natural resources and nearer to large centers of population and markets but hampered by a highly centralized and paternalistic government is the basis for the above conclusion.

During the period of our growth and development the activities of the federal government necessarily increased and expanded, but until the last decade this growth and expansion was, in the main, within constitutional limits with full recognition of individual rights, private enterprise, and the doctrine of separation of powers.

In the last decade a marked change has been effected. The powers of government have become more and more centralized in the federal government. The exact number of federal executive bureaus and agencies can not be determined, but it is reliably reported that there are currently more than three million federal employees, exclusive of the personnel of the armed forces, engaged in regulating intimate details in the private affairs of the citizens—a number (assuming four persons per family) equal to all of the breadwinners in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota and Wyoming. The number of federal employees so engaged in most states greatly exceeds the number of persons engaged in administering the affairs of all branches of the state and local government.

During the same period there has been a growing tendency to ignore the doctrine of separation of powers and the due processes of law.

The developments above referred to are not the result of the increased complexity of our affairs. They are not the result of emergency conditions. They are the result of a definite plan and program designed to change our form of government. The pattern and methods followed are strikingly similar to those which were followed in the major European countries now operated under totalitarian forms of government. Individual hardship and privation during the great depression, the exigencies of war, and the desire for efficiency have been utilized to further the consummation of this plan.

It is our opinion that such centralization of government is, in fact, complex and inefficient. This complexity and inefficiency is magnified many times by the time and expense imposed upon the citizens in attempting to comply with the requirements of the system.

Although there are increasingly large numbers of the citizens who want to exercise their rights in government and who are well aware of the dangers in a highly centralized and paternalistic government, there are also large groups who appear to be willing to sacrifice certain individual rights and opportunity for security.

The growth and development of administrative agencies entirely within the framework of the Constitution is to be expected in the postwar period. To the extent that such development occurs and results in speedy and efficient administration of the law, it is in the interest of the nation and especially in the interest of the Bar.

We also find, however, that the continuation and extension of the program aimed at changing our form of government is planned for the postwar period. We have made inquiry of more than a hundred of the better known administrative bureaus in the Nation's capital, most of which were originally

created as emergency measures, and received thousands of pages of reports and plans which have been painstakingly compiled by these bureaus to justify their continued existence, growth and expansion after the war. (See appendix attached). It appears that many valuable manhours are currently devoted to such planning.

We also find that it is seriously contemplated by some authorities that the present hostilities may be terminated, not by treaty in the exercise of the treaty-making power of our government, but by executive agreement, thereby maintaining for a period of several years after the termination of hostilities a basis for the continued exercise of war powers by the federal government and the Executive.

CONCURRENCES WITH RESERVATIONS AND DISSENTS

"I concur in the Report of the Subcommittee on Centralization of Government and Statism with the following reservations. I dissent from the Subcommittee's finding that they (the developments described) are the result of a definite plan and program 'designed to change our form of government' and 'that the continuation and extension of the program aimed at changing our form of government is planned for the post-war period.' No facts are adduced by the Subcommittee which support such a finding.

"I concur in the second recommendation of the Subcommittee with the reservation that there should be added the phrase 'and the termination of post-war emergencies' or the like. I concur in the third recommendation of the Subcommittee with the reservation that the phrases 'decentralization of government' and 'system of free enterprise' are too general and undefined to give the recommendation a specific meaning."

G. W. MORGAN

"I think the recommendations of the Subcommittee on Centralization of Government and Statism should be adopted, except as to two phrases:

"It seems to me that the 're-establishment of a system of free enterprise' is likely to be misunderstood. It affords an opportunity for someone to say that we are suggesting a 'return to normalcy.' I think it is generally agreed that a return to the old system of free enterprise is out of the question, and what we mean is that, so far as possible, consistent with economic development, free enterprise and individual initiative shall be encouraged and protected.

"I do not like the phrase in Section 7 of the Recommendations: 'The long-range stultifying effect of the adoption of a highly centralized and paternalistic form of government.' Nobody disagrees with the statement, but I think, in a recommendation, it has no place, because it has a political suggestion.

"While the preamble in this report, on the whole, contains sound statements, yet I think it is also subject to misinterpretation and criticism. I don't think the Bar ought to flatly make the charge that 'the developments above referred to * * * are the result of a definite plan and program designed to change our form of government,' or that a certain program is 'aimed at changing our form of government for the post-war period.'

"In short, it seems to me the tone of this preamble lends itself to the criticism that it is a bit too much of a political pronouncement, rather than the reasoned statement of lawyers.

"Furthermore, the short excerpts from the statements of various boards appearing as an appendix to the report, are subject to the criticism that a few words lifted from the context of a statement or document may not tell the whole story."

NEIL M. CRONIN

With the Appendix attached, these subcommittee reports constitute the report of the full committee.

Respectfully submitted,

JOSEPH W FINLEY, Chairman	URBAN J. STEIMANN
JAMES E. CARR	T. O. STREISSGUTH
CLIFFORD E. ENGER	CHESTER L. WILSON
JOHN J. McDONOUGH	JOHN A. WEEKS
J. H. MANION	GEORGE W. MORGAN
CHESTER-L. NICHOLS	F. C. MCGIVERN
JAMES G. NYE	H. R. PFEIFFER
WILLIAM PROSSER	NEIL M. CRONIN
WENDELL O. ROGERS	DAVID SHEARER

APPENDIX TO REPORT OF SUBCOMMITTEE ON CENTRALIZATION OF GOVERNMENT AND STATISM

The subcommittee inquired of more than 100 governmental bureaus as to their plans for continued existence after termination of the war. Thousands of documents reporting post-war plans were received, it has been impossible to read and digest all of this material. This summary as to certain bureaus discloses the plan and purpose of these bureaus:

The WPB (War Production Board) has made a detailed study of some major industries (one, the textile industry) for the purpose of supervising the allotment of materials to the individual factories in *peacetime*.

The OPA (Office of Price Administration) asserts its existence will be as fully essential after the war as it is at present.

The WMC (War Manpower Commission) has a subcommittee considering its post-war plans.

The USMC (United States Maritime Commission) reported 14 subcommittees working on its plans; it expects to have 60 people so engaged.

The OCD (Office of Civilian Defense) reported through its acting director, "It appears highly desirable * * * to continue * * * work after the war * * *"

The director of UNRRA (United Nations Relief and Rehabilitation Administration) informs us, "* * * we are laying the foundations for the better future of our hopes. Certainly this is our purpose and this is our intent. We must be concerned not alone with the stark emergencies of the first few months after liberation, but with the future as well."

The USHA (United States Housing Authority) plans on "supervising 180,000 dwellings."

The PRA (Public Roads Administration) expects to deal with an "estimated * * * \$500,000,000.00 construction program."

The CAA (Civil Aeronautics Authority) has a proposed system costing about \$435,000,000.00.

The PRRA (Puerto Rico Reconstruction Administration) generalized, "This administration is an agency * * * established by executive order of the President * * * to initiate a program of relief within Puerto Rico. * * * Regret no detailed plans * * *"

The EHFA (Electric Home and Farm Authority), reached after search, replied, "By executive order all of the assets and records of EHFA have been transferred * * *"

The NPPC (National Power Policy Committee) refused outright to give any information except to the President.

The FFC (Foreign Funds Control) simply sent its regrets.

The FPHA (Federal Public Housing Authority) frankly stated, "The FPHA will extend its * * * program to the extent authorized * * *"