

3-1926

Effective Regulation of Public Utilities, by John Bauer

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Recommended Citation

Merrill, Maurice H. (1926) "Effective Regulation of Public Utilities, by John Bauer," *Indiana Law Journal*: Vol. 1: Iss. 3, Article 7.
Available at: <http://www.repository.law.indiana.edu/ilj/vol1/iss3/7>

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While the book cannot be recommended for classroom use, or for collateral study, it can be recommended to the general reader.

HUGH E. WILLIS.

Effective Regulation of Public Utilities. By John Bauer. The MacMillan Company. New York. 1925. Pp. VIII, 381.

The author of this book is concerned not so much with the law of the present as with the policies that shall underlie the law of the future. Mr. Bauer fully realizes that governmental regulation of public utilities is here to stay and that the category of utilities is likely to be broadened as time goes on to include industries and activities now free from supervision. He recognizes, however, that regulation in the past and present has not attained the efficiency which it should. The process of regulation, he finds, has been expensive, dilatory and cumbersome; confusion as to the basic principles has become worse confounded through much litigation; and this litigation has stirred up useless and deplorable antagonism between the utilities, the regulatory bodies, and the public.¹

The chief storm-center has, of course, been the rate-making function, with its vexed questions of "valuation" and "confiscation." Mr. Bauer feels strongly that this is the point at which regulation under present conditions is failing and that it is essential to successful regulation that the rate making process "be made definite and practically automatic," something which he considers to be entirely within the bounds of the attainable.² This is not a new suggestion, of course.³ Neither is there novelty in the proposal to make the process automatic through the adoption of the actual cost of the plant (or prudent investment) as the rate base. The desirability of this basis has been urged by the majority of recent commentators upon the subject in legal periodicals,⁴ with here and there a dissenting voice,⁵ and Mr. Justice Brandeis' great exposition of it must always be kept in mind.⁶ The valuable thing is that Mr. Bauer provides us with a detailed scheme for establishing actual cost as the rate base, giving fairly the arguments for and against his proposals and the reasons why he thinks they should be adopted. The author's broad experience entitles his recommendations to earnest and thoughtful consideration.

Mr. Bauer believes that it is the duty of the legislature to define in detail the policy of the state as to valuation and rate making, leaving to the

¹ See the author's comments on page 11 and 45. See also the preface, page v.

² Pages 34, 104.

³ "Is it impossible to make the value of a plant a matter of bookkeeping, to be settled by a rule of thumb, if you please, with a result that is fair and not utterly speculative?" Edwin C. Goddard, *Public Utility Valuation*, 15 Mich. Law Rev. 205, 220.

⁴ Edwin C. Goddard, *Public Utility Valuation*, 15 Mich. Law Rev. 205; *Fair Value of Public Utilities*, 22 Mich. Law Rev. 652, 777. Robert L. Hale, *The Physical Value of Fallacy in Rate Cases*, 30 Yale Law Jour., 710. Donald R. Richberg, *The Supreme Court Discusses Value*, 37 Harv. Law Rev. 289; *A Permanent Basis for Rate Regulation*, 31 Yale Law Jour. 263. Robert H. Whitten, *Fair Value for Rate Purposes*, 27 Harv. Law Rev. 419.

⁵ Hillier Blake Brown, *The Defects in Mr. Justice Brandeis' Theory of Prudent Investment as a Rate Base*, 12 Calif. Law Rev. 283. Frederic G. Dorety, *The Function of Reproduction Cost in Public Utility Valuation and Rate Making*, 37 Harv. Law Rev. 173.

⁶ *State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission*, (1923) 262 U. S. 276, 289, 67 L. Ed. 981, 985.

regulatory bodies simply the task of enforcing the policy so adopted.⁷ He believes that the legislature is free, under the decisions of the Supreme Court of the United States, to adopt actual investment as the rate base, for existing plants as well as for those to be constructed in the future. In his view he has distinguished support⁸ and his own argument is so cogent and so forceful⁹ that the reviewer finds it impossible to disagree therewith in point of logic. However, in view of the strong influence upon developing legal doctrine of *dicta* frequently and emphatically repeated, one may not be sure of the result in the absence of a binding precedent.

Mr. Bauer recognizes that one drawback to the adoption of his plan is the cost of the appraisals of utility property essential to its inauguration.¹⁰ In these days, when governmental parsimony and individual extravagance are earnestly preached in the sacred names of Mammon and of Diana of the Ephesians, the objection is a serious one. But, as our author points out, the resultant advantages would amply justify the first cost. It is to be hoped that some legislature will have the courage to put Mr. Bauer's suggestions into effect and that, when the policy meets the inevitable contest in the courts, its constitutionality will be as ably defended as it is in the volume under review.

MAURICE H. MERRILL.

Genesis of the Constitution of the United States of America. Breckinridge Long. The Macmillan Company, New York, 1926. 260 pp.

The main theme of this work is accurately indicated in its title. Mr. Long has attempted to trace the development of government through the colonial period, through the period of the Revolution, and the Articles of Confederation to the period when the present constitution was framed and formulated in 1787. The attempt is confined to an examination of the formal documents which preceded the constitution of 1787 and although some historical and philosophical setting is afforded here and there the work is primarily an analysis of the so-called fundamental documents, charters, and articles which were drawn up in the various colonies and during the period of the first state governments. The book is well written, and makes very interesting and suggestive reading. One may feel that too much emphasis has been placed on the formal writing and too little on the economic, social, and religious and political forces which are continuously at work in supplementing, modifying and replacing the written portions of these many documents. Too little effect is recognized in the philosophical beliefs of the time, but on the other hand the book is commendable in that it brings to the forefront the fact that most of the provisions of the constitution which was formulated in 1787 had its counterpart in the provision of some earlier document. An interesting feature of the book is an annotation of the constitution showing from what document and the section thereof each provision of the present constitution is thought to have been derived.

OLIVER P. FIELD.

⁷ For similar suggestions, see F. F. Blachly, *The Relationship between the State Legislature, the Utilities Commission and the Courts in Rate Making*, Proceedings, Fifth Annual Convention, Southwestern Political and Social Science Association (1924), 7, and Gerard C. Henderson, *Railway Valuation and the Courts*, 33 Harv. Law Rev. 902, 1031.

⁸ Edwin C. Goddard, *Fair Value of Public Utilities*, 22 Mich. Law Rev. 777, 785. Donald R. Richberg, *A Permanent Basis for Rate Regulation*, 31 Yale Law Jour. 263, 278; *The Supreme Court Discusses Value*, 37 Harv. Law Rev. 289.

⁹ Chapter V.

¹⁰ Page 59.