

We need a non-political book that questions reforms such as these; that questions for what earthly reason the law should terminate the non-immigrant status of a harmless visitor before his application for a change of status is approved. Surely the Republic could survive the risk of having such a visitor stay out his allotted six months even if he has had the bad luck of finding his quota oversubscribed at the instant when the Attorney General exercises his discretion.

Finally, the work we need should relate the statute and the regulations to the existing body of case law. The bulk of the case law, it is true, deals with the law as it existed before December 1952. However, the McCarran Act has not changed the fundamental frame of discourse of our immigration laws, and court decisions under the old law remain enlightening for many purposes. Yet Mr. Auerbach's nod to the judiciary consists of nine Supreme Court citations in his 372 pages.¹²

This review has already referred to the damage flowing from the inability of ordinary people to obtain accurate information about the immigration laws. Equal damage is done by the many purely technical irrationalities of the Act.¹³ Substantial improvements in our immigration laws and procedures could be achieved with less emphasis on the great policy issues they raise, such as the maintenance or abolishment of the national quota system, and greater efforts to do a conscientious job of technical, legal criticism and reform. For better or for worse, there seems to be passionate feeling on both sides of the political issues, and hence major reform must be preceded by education. Criticism of the technical weaknesses of the law should not arouse any passions and should be certain to be welcomed by dispassionate minds.

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PREPARING FOR THE UTILITY RATE CASE. By Francis X. Welch. Washington, D.C.: Public Utilities Reports, Inc., 1954. Pp. xi, 323. \$10.00.

NOBODY, but nobody, whether lawyer, responsible executive, or expert witness, should allow his client, his company, or himself to become involved in a utility rate controversy without first reading Francis X. Welch's *Preparing for the Utility Rate Case*. This scholarly, provocative and eminently practical

12. In discussing deportation procedure Mr. Auerbach mentions the Administrative Procedure Act, but he does not mention the case of *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950). He limits himself to informing us that both the Board of Immigration Appeals and the Conference Report on the Act consider the Immigration and Nationality Act "within the pattern" and meeting "the standards of the Administrative Procedure Act." Pp. 239, 240. Cf. the recent case *Shaughnessy v. Pedreiro*, 349 U.S. 48 (1955), holding § 10 of the Administrative Procedure Act applicable to deportation orders, and quoting the late Senator McCarran as authority for the holding. *Id.* at 52.

13. "It is well that we should be free to rid ourselves of those who abuse our hospitality; but it is more important that the continued enjoyment of that hospitality once granted, shall not be subject to meaningless and irrational hazards." L. Hand, J., in *Di Pasquale v. Karnuth*, 158 F.2d 878, 879 (2d Cir. 1947).

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treatise could well be worth its weight in platinum even to the experienced practitioner in this difficult specialty. And its value to the green hand could probably be arrived at only by dropping grains of plutonium into the balancing scale.

In the first place, no competent text on public utility regulation has been published since the fourth edition of Oscar L. Pond's stately *Public Utilities* appeared twenty-three years ago, and Mr. Welch's volume fills a substantial part of that vacuum. Secondly, utility rate cases inevitably become more frequent as the price spiral twists inexorably upward, so that an ever increasing number of the interested will need Mr. Welch's timely advice. Thirdly, both regulators and regulated should re-examine certain accepted formulae which have become frayed in the clutch of economic circumstances but which some regulators tenderly cherish and which, for that very reason, are beyond the criticism of the Milquetoasts among the regulated. Therefore, only an author like Mr. Welch who, as editor of the *Public Utilities Fortnightly*, is not required to carry water for either team, was in a position to urge convincingly, "Let's have a look!"

It is not to be implied that Mr. Welch's book is solely for the utility executive, lawyer, or rate engineer. On the contrary, members of the various federal and state commissions and their staff personnel, as well as ambitious city attorneys bent upon lowering utility rates or resisting a proposed increase, will obtain many valuable suggestions which are not available in any other form. However, the Welch treatise is written primarily from the point of view of the investor-owned utility that has a rate case on its near horizon and needs guidance, the probability being that neither the utility's officers nor its counsel have heretofore paddled these often nonnavigable waters.

Mr. Welch begins by urging that utility executives obtain monthly reports on the adequacy of their rate structures in order to be able to anticipate and fully to prepare for rate proceedings. Not the least important preparation, he indicates, will take the form of a public relations program that can achieve public understanding of why there has to be a rate case, public recognition of the fairness of the basis of the case (substantial wage and tax increases, for example), and continued cordial relations with customers and the public generally, whatever developments the rate case may bring.

Mr. Welch, who is a lawyer himself, goes so far as to suggest that the lawyer responsible for the trial of the rate case should be permitted to check *but not to edit* statements, news releases and other publicity material. This radical idea will seem almost treasonable to the profession, but now that the present reviewer's rate case experiences are behind him, he is inclined to admit that the public relations expert occasionally has almost as much competence as counsel.

Successive chapters deal with (1) the birth of opposition to utility rate adjustments;¹ (2) the nature of the utility rate proceeding (Mr. Welch suggests that the four definite phases of such a proceeding are: Preliminary, Prepara-

1. C. III.

tory, Presentation, and Post-hearing);² (3) events leading up to the rate case³ (How long does it take to prepare a utility's rate case? "Years and years—from the day the company starts in business");⁴ the selection and function of the utility's attorney⁵ (Will he be "inside" or "outside" counsel, a local luminary or imported talent? Will the scope of his authority be fully agreed upon?); (5) the grand strategy of the rate case⁶ ("[P]repare every case for presentation to the Commission as if it were expected to be appealed");⁷ and (6) the mechanics of preparation⁸ (The three "R's" which must be dealt with comprehensively are Rate base, Return, and Running the Business).

Mr. Welch begins his discussion of the still troublesome proof of the utility rate base with the suggestion that *both* the rate of return and the valuation to which such rate of return is applied "should be raised if the investor is to be attracted to the utility business over the long range."⁹ Then, after discussing the advantages claimed for the accounting or original cost rate base taken from a utility's carefully supervised books, he declares—at least partly in reliance upon recent decisions of state courts of last resort—that it is the duty of a utility management to present *all* evidence bearing on the value of its property, including estimates of construction cost at recent price levels, as well as computations based on tailor-made price trends.

Overheads, including going value (any claim for going value, unless established by local usage, is debatable practice, the author indicates), accrued depreciation and working capital are considered in satisfactory detail. Then follow two chapters that deal with operating expenses¹⁰ (the third "R"—Running the Business). This discussion contains a number of highly practical suggestions, among them the use of operating ratios to test the reasonableness of operating expenses, and the propriety of claiming dues and donations as operating expenses on the theory that compensating benefits to the company and its rate payers can be proved.

Two of Mr. Welch's most interesting and valuable chapters are those that cover rate of return¹¹ and the ultimate problem of rate adjustments,¹² the former including a castigation of the cost-of-money concept and the latter an illuminating discussion of the theory of rate design. The late Frank Newton is quoted¹³ as saying that the fundamental requirements are: (1) over-all adequacy: total revenues should cover total costs; (2) class adequacy: revenues from the respective classes of service should be reasonably related to the costs

2. C. IV.

3. C. V.

4. P. 78.

5. C. VI.

6. C. VII.

7. P. 112.

8. C. VIII.

9. P. 144.

10. Cc. XII and XIII.

11. C. XIV.

12. C. XV.

13. P. 290.

of supplying each class; and (3) competitive adequacy: rates should be designed to promote and hold the business. Mr. Welch notes that the tendency has been toward rate simplification, and he observes that rate design is the function of utility management, but he also says that the reasonableness of any proposed rate must be susceptible of demonstration. In brief, there may still be some virtue in that favorite of the bad old days, "Take the most feathers from the goose with the least squawk;" but even the squawkless goose now gets a substantial measure of regulatory protection.

Mr. Welch's book belongs in the office of every utility executive whose company may be subjected to the rigors of rate case procedure; in the library of every utility lawyer, for its insights into the whole regulatory problem, as well as its sound, practical rate case suggestions; and on the desk of the head of every utility rate department or division. It deserves to be perused, pondered, studied. More profitable reading for the gentlemen indicated could not well be imagined.

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STUDIES IN FEDERALISM. Edited by R. R. Bowie & C. J. Friedrich. Boston: Little Brown & Co., 1954. Pp. xlii, 887. \$15.

FEDERALISM, MATURE AND EMERGENT. Edited by Arthur W. Macmahon. New York: Doubleday, 1955. Pp. xi, 557. \$7.50.

BOTH these composite volumes represent the keen American interest of the last few years in the possibility of applying the notion of federalism to the problems of Western Europe. The *Studies* prepared under the direction of Professors Bowie and Friedrich were mainly done in the period July-October 1952 on behalf of a Committee of the European Movement. Upon these studies were based resolutions relating to a European constitution which in turn were adopted in November 1952 by the Committee of the European Movement. This Committee's work paralleled rather than inspired the work undertaken by the so-called Ad Hoc Assembly, itself an outcrop of the Schuman Plan organization, which produced early in 1953 a "Draft Treaty Embodying the Statute of the European Community," printed like the resolutions as an appendix to this volume.

The *Studies* themselves deal with the general theme of federalism, partly under the heading of institutions, partly under that of functions, and partly in the light of particular problems such as overseas territories and constitutional amendment. In each case the method adopted is the same: to examine how the subject is handled in the existing "classic" federations, the United States, Canada, Australia, Switzerland and Germany (in its Imperial, Weimar and Bonn phases), with occasional reference to Austria; and then to see what lessons can be drawn for a federation designed in the first instance for the Schuman Plan countries. Each chapter ends with appendices analyzing the relevant constitutional provisions and practices in the existing federations.

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