



Spring 3-1-1970

Principles Of Public Utility Regulation: Theory And Practice. By A.J.G. Priest

Charles F. Phillips, Jr.

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlulr>



Part of the [State and Local Government Law Commons](#)

Recommended Citation

Charles F. Phillips, Jr., *Principles Of Public Utility Regulation: Theory And Practice*. By A.J.G. Priest, 27 Wash. & Lee L. Rev. 187 (1970).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol27/iss1/16>

This Book Review is brought to you for free and open access by the Washington and Lee Law Review at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Law Review by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

BOOK REVIEWS

PRINCIPLES OF PUBLIC UTILITY REGULATION: THEORY AND PRACTICE. By A.J.G. Priest. Charlottesville, Virginia: The Michie Company. 1969. Two volumes: Vol. 1, Chapters 1 to 13; Vol. 2, Chapters 14 to 27. Pp. xx, 936. \$60.00.

A. J. G. Priest has been a student of public utility regulation for more than 47 years—as a lawyer before courts and regulatory agencies and, more recently, as a teacher. Now Scholar in Residence at the University of Virginia, these two volumes clearly indicate that he is a skilled practitioner of public utility law. His own beliefs are fully spelled-out and he proves that public utility law need not be dry.

The first fourteen chapters cover the traditional public utility topics. They are straight-forward, but reflect detailed summaries of regulatory holdings. Chapters 1 and 2 present the historical bases of public utility regulation and the nature of the process, including Judge Friendly's thorough "searching criticisms" of the regulatory agencies.¹ Chapters 3, 4, 5, 8 and 14 are on rate making, rate base, rate of return, rate structures, and control over securities. The Service Obligation and Abandonment of Service are treated in Chapters 6 and 10. The former chapter also contains a discussion of electric utility power failures and the various legislative proposals which followed them. Discrimination is considered in Chapter 7, as is the growing problem for regulators and regulated alike of new competition. Certificates of Public Convenience and Necessity are handled in Chapter 9. Trying a rate case and post-trial procedures are discussed in Chapters 11 and 12. Chapter 13, The New Capital Problem, represents a slight departure from tradition. In this chapter, Mr. Priest reaches the following conclusion (p. 465):

Perhaps the most vital problem of expanding utilities is the search for new capital. Outside money must be had if a utility is to measure up to the responsibilities properly imposed by regulation. But it can only be had if effective management and reasonable rates of return provide the earnings investors legitimately anticipate. Capital cannot be conscripted. Time, nervous erosion, onerous responsibility and a high degree of expertness are involved. The executive who so carries that burden that his company is able persistently to finance its growth at the lowest costs consistent with sound fiscal practice deserves well of his community.

The last thirteen chapters, some portions of which have previously appeared in print, reflect Mr. Priest's opinions on various regulatory

¹H. FRIENDLY, *THE FEDERAL ADMINISTRATIVE AGENCIES* (1962).

issues and decisions. As a result, they are more controversial. Chapter 15, Certain Major Public Utility Decisions in Perspective, deals basically with the implications of the Supreme Court's "end result" doctrine.² The Public Utility Holding Company Act is "revisited" in Chapter 16. There are two "Regulatory Gap" chapters: Chapter 17, "Gaps" in the Regulatory Process and the Federal Dentist and Chapter 19, The Regulatory "Gap" as Applied to Accounting. Chapter 18 discusses natural gas rates, with appropriate emphasis upon the *Permian Basin* decision;³ a decision that "probably is the Supreme Court's most important opinion in the public utility field since *Hope Natural Gas*"⁴ (p. 575). Hydroelectric project licenses are the subject of Chapter 20; nuclear reactors of Chapter 26. The Bell System's interstate and foreign rates and services are discussed in Chapter 22. There are three chapters on transportation: Chapter 21, Regulation of Air Commerce; Chapter 23, Is the National Transportation Policy of 1940 Obsolete; and Chapter 24, Railway Mergers: Their Necessity and Inevitability. Chapter 25 considers a topic frequently overlooked — Regulation of Water Companies.

In the 27th and concluding chapter, Mr. Priest discusses "Six Aberrant Utility Myths," primarily applicable to the electric utilities. He admits that none of the myths "might be serious by itself, but in the aggregate, as they are echoed and repeated, harm is done to an essential industry which deserves more bouquets than brickbats" (p. 788). Without implying agreement that these myths are as important today as the author feels they are, the list is reproduced here (pp. 787-88):

Some portions of anti-utility pabulum offered from many platforms with zeal and persistence are these:

(1) that public utilities are "guaranteed" a fair rate of return, with the utility stockholder always "assured of his dividend";

(2) that public utilities, to the extent that they constitute monopolies, are not part of the free-enterprise system;

(3) that an electric utility which purchases power from a government development "adds a profit" when it retails that power to its customers;

(4) that rates established by the TVA and other government-owned systems provide a relevant and accurate yardstick by which the rates of electric utilities may be measured;

(5) that when an electric utility is licensed to proceed with a hydroelectric development, water rights are "given away"; and

²FPC v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944).

³*Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

⁴FPC v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944).

(6) that the public generally understands and approves the "preference" clauses under which government hydroelectric developments are used to promote "public" power.

But Mr. Priest's opinions are not confined to the concluding chapter. He firmly believes in regulation: "Regulation of rates and standards of service is the only technique we have evolved for dealing with the problem, short of that government operation which characterizes the planet's less enlightened areas. As an adopted Virginian necessarily exposed to the doctrines of Mr. Jefferson, this writer looks upon that alternative with nausea" (p. 2). He argues that commissioners should be let alone and that their terms should be longer ("certainly ten years or more") (p. 22). He supports the fair value principle on grounds that "Original cost alone cannot be a viable concept while the value of the dollar shrinks persistently and insistently, month after month" (p. 495). He thinks that a coordinated national transportation system may be possible if we have a Secretary of Transportation who is "(a) dedicated, (b) knowledgeable, (c) strongly supported by the White House, (d) possessed of effective friends in Congress, (e) articulate to the point of eloquence and (f) able to meet representatives of special interests with a disarming smile and instructions to leap into the Potomac" (p. 729). And a witness in a rate case is cautioned to "speak clearly and not too rapidly, for his pearls are trash unless they embellish the *record* of the case" (p. 425). No reader will be bored!

In a work of this length, with its wide range of topics and policy issues, it is perhaps inevitable that readers will find areas of disagreement. This reviewer is no exception and, to give but one example, would take issue with Mr. Priest's support of the fair value principle. But such areas of disagreement seem of less significance than two omissions. The first was imposed by the author himself: "Because this is the presentation of a lawyer rather than an economist, the actual holdings of courts and regulatory agencies will receive more attention than the theories they have espoused." Yet, public utility regulation, like anti-trust policy, is an area where the two disciplines of law and economics (among others, such as political science) are inescapably interwoven. To illustrate: Mr. Priest starts off by asking the relevant question: "Why regulation of public utilities?" He then answers: "Fundamentally, because utilities have been natural monopolies to greater or lesser extents" (p. 1). This statement begs the question, for what are "natural monopolies?" And to answer this question, much more economic theory is essential (e.g., long-run decreasing costs and relative inelasticity of demand). A similar problem arises with respect to the discussion on competition in the regulated sector of the economy; a discussion

that is both legalistic and void of careful analysis, as well as entirely too brief.

In the absence of a theoretical foundation, regulatory law will become increasingly obsolete and, equally important, one is deprived of a standard for making value judgments. Regulatory proceedings, moreover, are becoming more complex, with greater emphasis upon economic analysis (e.g., marginal cost pricing). Significant research has been done in such areas as the performance of firms under regulation and the determination of a fair rate of return.⁵ Little of this research is even referred to by Mr. Priest. The point is not that economists should dominate the regulatory process, but rather that regulation is a subject requiring a strong inter-disciplinary approach.

The second omission, not self-imposed, concerns the failure to evaluate the regulatory process. (Indeed, the goals of regulation are not fully discussed.) This omission assumes great importance in view of Mr. Priest's consistent and emphatic belief in commission regulation. Many have expressed the opinion that the "headless fourth branch of government" must inevitably become industry-dominated.⁶ Several have questioned whether regulation can be effective in controlling industries.⁷ Others maintain that legislative statutes must be rewritten, and regulatory agencies reorganized, in line with developing technology.⁸ Some even argue that the growth of competition indicates that substantial deregulation is possible.⁹ These and other similar positions deserve at least some space in a treatise of this nature.

Despite these omissions, Mr. Priest's work represents a contribution to the rapidly expanding volume of literature on public utilities.

CHARLES F. PHILLIPS, JR.*

⁵See, e.g., H. TREBING, *PERFORMANCE UNDER REGULATION* (1968); H. TREBING & R. HOWARD, *RATE OF RETURN UNDER REGULATION* (1969).

⁶E.g., M. BERNSTEIN, *REGULATING BUSINESS BY INDEPENDENT COMMISSION* (1955). But see Jaffe, *The Effective Limits of the Administrative Process: A Reevaluation*, 67 HARV. L. REV. 1105 (1954).

⁷See, e.g., Gray, *The Passing of the Public Utility Concept*, J. LAND & P.U. ECON. 8 (1949); see also Posner, *Natural Monopoly and Its Regulation*, 21 STAN. L. REV. 548 (1969).

⁸See, e.g., J. LANDIS, *REPORT ON REGULATORY AGENCIES TO THE PRESIDENT-ELECT* (1959).

⁹The case for deregulation is particularly strong in the transportation industries. See, e.g., J. MEYER, M. PECK, J. STENASON, C. ZWICK, *THE ECONOMICS OF COMPETITION IN THE TRANSPORTATION INDUSTRIES* (1959).

*Professor of Economics, Washington and Lee University.

THE RISE OF THE ACCOUNTING PROFESSION, Volume 1.
By John L. Cary. New York, New York: American Institute of
Certified Public Accountants. 1969. pp. xvii, 387. \$7.50.

The Rise of the Accounting Profession, which might better have been entitled *The Rise of the Accounting Profession in the United States*, is a two-volume history of the evolution of the accounting profession in the United States. Volume I, reviewed here, covers the period 1896-1936. Volume II, to be issued at a later date, will cover from 1937 to the present time. The book was originally intended to be a history of the American Institute of Certified Public Accountants, but its scope was subsequently broadened. The book is written from the viewpoint of the Institute, as noted by the author, Mr. John L. Carey, who spent his entire working life as an employee of the Institute. Mr. Carey recently retired as Administrative Vice-President of the AICPA.

The book is subtitled *From Technician to Professional*. This title accurately describes the evolution of the public accountant in the United States. As the author makes clear, "the art of accounting is ancient, the profession of accounting, in comparison with law and medicine, is very young." Even the earliest civilizations developed rudimentary accounting systems. Double-entry bookkeeping was first described by an Italian monk in 1494, although the system had probably been in use for some two centuries before that time. The Industrial Revolution in England in the 18th Century gave rise to the corporate form of business organization which, in turn, created a need for the independent auditor to protect the stockholders' interests. British Institutes of Chartered Accountants became strong professional organizations.

Because British capital was extensively invested in American industries, British Chartered Accountants were sent to the United States to protect the interests of the British investors. Many of them remained in the United States, and together with a few native accountants formed the nucleus of what was to become the public accounting profession in the United States. In 1887 they formed the American Association of Public Accountants — the forerunner of the American Institute of Certified Public Accountants.

In 1887, the term "technician" was more descriptive of the public accountant than was the term "professional." Public accounting possessed few of the generally recognized criteria of a profession:

1. a body of specialized knowledge.
2. a formal educational process.
3. standards governing admission.
4. a code of ethics.
5. a recognized status indicated by a license or special designation.
6. public interest in the work.
7. social obligations.

This volume describes how accounting evolved into its present professional status by meeting these criteria over the years. Today there is a common body of knowledge. Educational requirements have been strengthened. Formal examination and experience requirements exist. A code of ethics is enforced by disciplinary procedures. State laws, enacted through the public interest, regulate practice. Social responsibility is accepted by the profession.

The publication of this volume should help to stimulate interest in the origin and development of public accounting in the United States. It should also help to inspire a sense of pride among Certified Public Accountants in the relatively rapid evolution from technician to professional.

THOMAS E. ENNIS, JR.*

*Professor of Accounting, Washington and Lee University.