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Review of “Interstate Commerce Commission, Part III, Vol. A,” By I. L. Sharfman

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Book Reviews

INTERSTATE COMMERCE COMMISSION, Part III, Vol. A, by *I. L. Sharfman*. New York: The Commonwealth Fund, 1935. Pp. XII, 684.

The third volume of Dr. Sharfman's work is the first of two volumes covering Part III of his ten years of research in this field under the auspices of the Legal Research Committee of the Commonwealth Fund. The author continues his analysis, criticism and praise of the work of this administrative body in the scholarly method he has pursued in Parts I and II. In those he laid the foundation for the ultimate purposes of his survey, in fact, the purpose of the Legal Research Committee: to reveal so far as can be done "the extent to which administrative control has, by modern legislation, been in fact conferred." Part I, *The Legislative Basis of the Commission's Authority*, and Part II, *The Scope of the Commission's Jurisdiction*, brought the author toward his goal. The phase treated in Part III, *The Extent and Diversity of the Commission's Tasks*, recites the operative facts, and demonstrates the factual extent of conferred control. It is to fill two volumes, the first of which, now at hand, is larger than either of its predecessors by many pages.

Those interested in the study of administrative law must read this study of the activities of the Interstate Commerce Commission, collated and analyzed, so far as may be done in brief compass, from the annual and other reports of that body from its beginning. "The very growth and magnitude of these tasks . . . and the varied nature of these tasks in terms of both the subject matter to which they apply and the types of governmental authority involved in their performance, provides concrete evidence of the sweep of power entrusted to the Commission and of the marked departure from traditional legal processes of the administrative justice sought to be achieved." This statement on page 3 is amply borne out through the preliminary survey given in the 94 pages of Chapter XI (the first chapter of this volume). Two other chapters, *The Valuation Project* (Chapter XII, 214 pages) and *Control of Organization* (Chapter XIII, 304 pages) treat two phases of activity in great detail.

As indicated by the author, "the judicial and legislative aspects of the Commission's work manifest themselves chiefly, and in any event most significantly, in contested cases." (p. 3), i. e. matters of rates, charges and service. In the financial field the Commission has been concerned with the problem of control of organization, extensions, abandonments, intercorporate relations, issuance of securities and assumption of obligations. But there are other activities "the chief expressions of which consist in the general investigatory power, the regulation of service, both under normal conditions and in emergency situations, the enforcement of the safety acts, the promulgation and supervision of accounting practices and compilation of statistical data, participation in penalty suits and criminal prosecutions, and the administration of numerous miscellaneous enactments." (p. 5) To illustrate the quantitative side alone, numerous tables are given showing the growth of the burdens arising in successive years down to the time of the survey,

1933. Table V of the applications for fourth section relief, many of them "exceedingly voluminous and intricate, involving thousands of rates and many different situations" is of note as bearing upon the extent and difficulty of this administrative task, "For the thirteen years beginning in 1921 an aggregate in excess of \$16,000,000,000 of securities was authorized, exclusive of more than 8,000,000 shares of stock without nominal or par value, averaging an annual authorization of \$1,230,000,000." (p. 31)

"Brief reference is made to investigations undertaken by the Commission in response to special requests of Congress. Such requests, which are always complied with, have been numerous throughout the history of the Commission, and they have often been made without much regard to whether the proposed investigation was essential, or whether the administrative burdens imposed thereby would interfere with pressing duties in other directions." (p. 43) Mr. Sharfman lists these requests, and they show a remarkable variety; but they principally indicate to the reader the degree of reliance and trust placed in this great administrative agency. One instance that is familiar to those interested in the interstate commerce field was the request under Senate Resolution No. 334 (calendar date, January 26, 1927) "for a manuscript suitable for publication as a Senate document, covering the various acts administered by the Commission and related provisions of law, and annotated with digests, not only of all pertinent decisions of the Commission, including its regulations, but of the courts and other administrative agencies." (p. 44) The preparation took two years and it has been published in five volumes as *Interstate Commerce Acts Annotated*, prepared by and under the direction of Commissioner Clyde B. Aitchison. *Motor Bus and Motor Truck Operation* (140 I. C. C. 688, 1928) and *Coordination of Motor Transportation* (182 I. C. C. 263, 1932), are examples of investigations evincing the anticipation of present problems. Mr. Sharfman thinks that the *Rate Structure Investigation*, entered upon in compliance with the Hoch-Smith Resolution, was, without question, the most important and most extensive proceeding ever undertaken by the Commission. It was discontinued in 1933 under decision of the Commission to continue it through the usual course of procedure "in hearing complaints or by investigations on our own motion, rather than under a nation-wide investigation which is likely to assume unduly ponderous proportions." (p. 50) "Such matters . . . evince a disposition . . . to turn the Commission into a general service agency of the Government instead of permitting it to confine its energies within the bounds of its primary jurisdiction. Much more difficult and onerous tasks have been imposed upon the Commission in connection with changes in parcel post rates and classifications (176 I. C. C. 651, 1931, 182 I. C. C. 187, 1923, with later amendments); the adjustment of railway mail pay as between the Government and the carriers, including urban and electric railways (56 I. C. C. 1, 1919 and numerous later amendments); and the definition of the limit of the standard time zones into which the country is divided "with due regard to the convenience of commerce carriers." (51 I. C. C. 273 and 20 supplemental reports. [pp. 86, 87]).

The growth in activity, embracing the entire field of the Commission's tasks, is also evidenced by the course of expenditures and of personnel. In 1888, the first full year of the Commission's existence, its expenditure, in round numbers was, \$113,000; in 1930, it stood at \$8,124,000. . . . On the whole the growth of personnel tells the same story of rapid expansion. In 1887 the Commission's entire staff consisted of 11 employees; . . . the number of employees reached a maximum of 2,254 in 1917, largely as a result of the extensive tasks imposed by the Valuation Act; and in 1930 they stood at approximately 2,000." (p. 90)

Mr. Sharfman states that the problem of the pressure of the administrative burden will receive detailed consideration at the conclusion of this study, in connection with the matters of organization and procedure, so that we shall have to await that time to learn his conclusions on the subject. He notes the various expedients that have been adopted from time to time to facilitate administrative efficiency, and that additional changes, of more drastic character, have been proposed from time to time. "These proposals have thus far been symptoms of dissatisfaction rather than carefully defined policies, but they serve to indicate that the difficulties springing from the volume and sweep of the Commission's tasks have definitely emerged from the confines of academic comment and are making themselves felt as pressing practical problems. The more detailed discussion of such matters as *Acquisition of Control, and of Consolidation* in Chapter III (pp. 430-501) bear on any possible conclusions that may be drawn, particularly in connection with the Emergency Railroad Transportation Act of 1933, and the appointment of the Federal Coordinator of Transportation. Coordinator Eastman concludes that, "Theoretically and logically public ownership and operation meets the known ills of the present situation better than any other remedy. Public regulation of a privately owned and operated industry, reaching deeply into such matters as rates, service, capitalization, accounting, extensions, abandonments, mergers and consolidations, is a hybrid arrangement. When an industry becomes so public in character that such intimate regulation of its affairs becomes necessary, in strict logic it would seem that it should cease to masquerade as a private industry and the Government should assume complete responsibility, financial and otherwise. . . ." This is not necessarily correct. Nor is it necessarily the only answer to Dr. Sharfman's statement that "After a decade and a half of crowded experience, then, the problem of railroad cooperation and combination still awaits solution." (p. 501) May one not assume that many of the activities noted above, and in innumerable profusion throughout the book, have interfered with such solution? For various pertinent reasons Mr. Eastman was not ready to recommend public ownership and operation at the time of his report, January 21, 1935 (p. 502). Those who do not agree with him could add other reasons none of which would probably prove acceptable to the public ownership proponents. Perhaps we shall find a solution in the subsequent volumes of this series. We await them with the utmost interest.

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