June 1922

The Next Step in Public Utilities Regulation

George Jarvis Thompson
University of Pittsburgh School of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Energy and Utilities Law Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol28/iss4/2

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
THE NEXT STEP IN PUBLIC UTILITY REGULATION*

BY GEORGE JARVIS THOMPSON**

A major premise that is becoming increasingly articulate in the field of public utility law is an appreciation in thought and decision of the mastering influence of the de facto environment of time and place. Perhaps we can best visualize our day and place by comparing it with the scientific phenomena of the high explosive which consists of the terrific and rapid return to stable chemical conditions of elements unstabilized by the hand of man, for we stand amid a mighty reaction or readjustment of a civilization extraordinarily unstabilized by the recent world catastrophe in Europe. The significant fact is that the volcanic restabilization of the high explosive never resurrects the pre-existing situation, and, true to the same law of nature, we may expect the return of our chaotic affairs to present an aspect of normalcy quite strange to ante-bellum views. What more natural, then, than that in such a crisis we seek new palliatives, question the works of our fathers, and doubt the worth of our own achievements? Clearly under these circumstances, we may expect that many efforts will be made to bring about the next step in the obviously imperfect machinery of public regulation of utilities, and it is the object of this paper to point out the need and opportunity for improvement, and to suggest not the ultimate solution, but a possible program which may prove of prac-

* The substance of this article was embodied in a paper read by the author before the Public Law Section of the Association of American Law Schools, Chicago, Ill., Dec. 29, 1921.
** University of Pittsburgh School of Law.
tactical value in making that next step a real advance toward an efficient and just system of regulation.

To properly understand our subject let us briefly examine the course of the development of public service regulation in this country. The modern public utility era was ushered in less than a century ago with the advent of the steam railroad. That was the heydey of free individualism; but the very nature of the instrumentalities by which this new, enlarged and speedy service of transportation was rendered soon forced a realization that here, at least, that generally accepted doctrine was inapplicable. Then, as now, the need of the time was for some form of more direct and more efficient regulation. This has been met up to the present by a progress in three stages:

First: Local government regulation by municipalities, towns, etc., usually under franchise or contract.

Second: State-wide regulation of particular types of utilities by a special state commission for each type, e.g., the Railroad Commission, the Warehouse Commission, etc.

Third: Comprehensive state-wide regulation of all types of public utilities by a single body, usually designated the Public Utilities Commission or the Public Service Commission—the typical modern instrumentality of public regulation.

As we see, state-wide regulation began with the second stage—the special commission regulating a certain type of utility—and seems to have originated in the New Hampshire "Board of Railroad Commissioners," established by the Act of December 25, 1844. Although designed as a mere publicity body to keep tabs on the railroads in which the public funds of the time were heavily invested, we are greatly indebted to this Yankee innovation, for it became the characteristic instrumentality of public regulation in this field during the latter half of the past century, and proved by far the most effective means of protecting the public interest in that period of unparalleled expansion of agriculture, industry and transportation. It may be fairly said to have reached its zenith

---

1 This New Hampshire Statute, Laws 1842-1847, (Ch. 128), was entitled: "AN ACT to render railroad corporations public in certain cases and constituting a board of railroad commissioners." P. L. 121.

Some writers have placed the original commission in Massachusetts in 1843. In fact the Massachusetts Act of Mar. 26, 1845 (P. L. 582) seems to have created the first "Board of Railroad Commissioners" in that state. The error is probably attributable to the fact that the statutes for 1843-1845 appear in the same bound volume.
in the Federal Interstate Commerce Commission as established in 1887.\(^2\)

The third, or present day stage of development in public regulation, has been a natural step growing out of the success of the special commission of the second stage—a process of broadening the scope and powers of the commission into the modern comprehensive regulation, by a single public body, of practically all the many types of utilities in the state.

We may correctly speak of the transition from the second stage to the third as a "natural step", for it was a distinct and conscious change brought about along the line of logical sequence. This is distinctly seen if we recollect that this latest stage was inaugurated but fifteen years ago with the enactment of the Wisconsin Public Utilities Law of 1907,\(^3\) commonly called the "Wisconsin Experiment," followed by the Public Service Commission's Law of New York of the same year.\(^4\) The step became amazingly popular, and today practically all our states,\(^5\) Hawaii, Porto Rico, and the the Philippines have or have had regulatory agencies of this third type.

Supervising, as they do, in a detailed way every point of contact between the utility proprietor and the served public, from the right of the former to enter into or retire from the utility field, to the rates which the latter must pay and the measure of service and facilities to be rendered therefor, it is inevitable that the commissions should have incurred at times the ill will of first one and then the other of these highly conflicting interests. Having been established by the public to champion the public interest, and with the avowed object of lowering rates, enforcing improved and impartial service, and safeguarding the issuance of capital securities, they were bitterly assailed from the outset by the utility proprietors, who fought them in court and out. No better justification could have been devised for coercive public regulation, since, as might have been expected, this violent attempt to discredit the new instrumentality merely vindicated its necessity and success and led to even stronger public reaction against the utilities.

Passing time and the advent of a new generation of executives and

\(^3\) Wisconsin Laws 1907, ch. 499.
\(^4\) New York Laws 1907, ch. 429; Consolidated Laws, ch. 48.
\(^5\) Delaware alone has no state regulatory body. The Minnesota Railway and Warehouse Commission is still of the old second stage type. The following states have in addition to their modern utilities commissions a special Water Power Commission: Maine, New York, Pennsylvania and West Virginia. There is also a Federal Water Power Commission consisting of the Secretary of War, the Secretary of the Interior, and the Secretary of Agriculture. Federal Water Power Act of June 20, 1920, c. 285, § 1.
counsel brought to the proprietors the realization that they were merely injuring their cause by struggling against what was essentially a modern instance of the inevitable supremacy of the law as the protector and guardian of the general public interest. With this recognition of the necessity of adjusting themselves to the new situation, these proprietors soon came to prefer this state-wide regulatory agency to the alternative of local government regulation, for they found its broader jurisdiction and accompanying breadth of view worked out in more real justice than they felt they had received under the local system. Sensing this, however, the local communities in turn fell upon the state commissioners, charging partiality to the great corporate utility interests.

At this point the full force of the European disaster made itself felt in this country, and the public utilities, held down to a narrow margin of profit, were the first to experience the reaction of worldwide price inflation. Unable to increase the price of their product at will as could practically all the firms upon whom they were dependent for the commodities essential to the continuance of their service and the upkeep of their plants, the only course open to them was to appeal to the commissions to approve emergency rate increases. Presented with the dilemma of doing the very opposite to that for which primarily they had been established, the commissions hesitated, hoping the emergency would pass; but the rapid deterioration of the utilities, followed not infrequently by the complete cessation of all service, finally convinced them that they were confronted with a situation in which the vital public interest in securing a reasonably adequate service was only to be protected by increased rates, and the approval thereof by the commissions became the normal solution.

To the impartial observer, this emergency stress forced upon the modern commissions in the pioneer stage of their development, when they were busy platting out the reasonable as applied to the differing actualities within the scope of their jurisdiction, was met in general in a most commendable manner. Perhaps it was inevitable, however, that in this accentuated conflict of interests their efforts should have engendered dissatisfaction rather than have won commendation. The utilities felt that they had not received the speedy and full relief to which they were entitled; the public that the commissions had been too ready and too liberal in responding to the cry of the utilities for higher rates.

* This was the overwhelming testimony of the utilities executives from all parts of the country who appeared before the Federal Electric Railways Commission. See Wilcox, The Electric Railway Problem, ch. XL.
At this juncture a new source of hostility appeared—the labor element in the public utility field. The prevailing emergency conditions had brought labor sharply to a realization of the indirect control of the commissions over wages and efficiency through their extensive powers of rate and service regulation, and labor became one with capital in condemning the commissions for their hesitation in granting or approving rate increases, which would make possible higher wages. Labor having thus become a definite factor in the public utility situation, and a factor whose interests in general tend to conflict with the public interest in securing a cheap and efficient service, now finds itself in a position where its obvious de facto power to throttle the public necessity for the service demands that it be subjected to more direct public regulation; therefore, fearful of the extension of commission jurisdiction, it would abolish the whole system of comprehensive public regulation by commissions. This widespread dissatisfaction has culminated in determined and by no means unsuccessful efforts before constitutional conventions and in the legislatures of many states to abolish or modify the present day public utility commission possessing plenary regulatory powers.

What then should be the next step toward efficient regulation of public utilities?

Clearly any revision of the existing system should offer relief from those imperfections which experience has demonstrated to exist in the present method. The objections chiefly urged against the functioning of the modern commission may be grouped under three heads:

1. Perhaps two other objections to the modern commission regulation of public utilities should be noted: (1) Discouragement of public utility initiative, and (2) Absentee regulation of details by untrained public officials not responsible for the management. The solution of the first of these two practical objections will probably be largely psychological in that the proprietors of tomorrow having grown up in an environment in which the regulation of such enterprises in the public interest is the normal situation will not regard it as seriously hampering their initiative; whereas, the majority of our present day utility executives are laboring under a psychological viewpoint acquired in a youth when the speculative manipulation of the public service enterprise and its securities to the fabulous enrichment of those in control was a common occurrence, and a recognized goal of success for the ambitious.

In answer to the second of these practical objections it may be observed that the emergency of the World War has given both the commissions and the public a clearer conception of the true nature of the paramount public interest in securing and maintaining an efficient public service, and that this can only be accomplished by fair treatment of and hearty co-operation with the established utility. Again so far as there is a real basis for these objections the regulatory bodies in general are earnestly endeavoring to work out a just and practical solution. For instance, to meet the objection of diversity of regulation in the various states we have the Uniform Demurrage Code adopted by the National Convention of Railroad Commissioners, Nov. 1909, and applied to interstate commerce by the Interstate Commerce Commission in December of the same year. This development is fully described in Swift & Co. v. Hocking Valley R. Co., 243 U. S., 261 (1917).
First: Unreasonable delay in action.

Second: Frequent changes in personnel of commission, with consequent susceptibility to political influences, and even aside from this, the likelihood of a resultant shifting in the bases of regulation.

Third: The departure from fundamental common law principles, in that the commission is empowered to exercise the anomalous functions of prosecutor, judge, jury and sheriff or executioner.

That we may appreciate the exact situation let us review some of the more recent attempts made to negotiate this next step, and see to what extent they have tended respectively to eliminate these objections.

The progressive Commonwealth of Massachusetts assumed leadership in this movement when in 1918 by constitutional amendment it converted the Public Utilities Commission into a subordinate executive and administrative department of the state government known as the Public Utilities Department. A cynic might suggest that this Massachusetts Plan of converting the commission into a subordinate executive department, and thus tying up its destinies directly with the political party in power for the time being, is but a candid recognition of the realities of the present situation. Be that as it may, this plan in its present form is hardly to be recommended as the next step toward efficient regulation of our public utilities. It affords no prospect of relief from the defects of the existing system, but instead emphasizes one of its most objectionable features—the susceptibility to political influence.

* Whatever we may hold in order to keep within the letter of the arbitrary constitutional divisions of government, the actual fact is that these regulatory agencies do exercise judicial functions of far greater import to the community than the ordinary determination of the courts.


The former Public Utilities Commission, and the Board of Gas and Electric Light Commissioners were abolished, and their powers and functions vested in the Department of Public Utilities to be conducted by the commission of that department, consisting of five members, directly responsible to the governor and his council.

10 Indeed this feature of direct political control stands out significantly in the act, sec. 118 providing that the governor may appoint commissioners in case of vacancy, "and may, with the consent of the council, remove any commissioner." For an instance of alleged gubernatorial coercion of a Public Service Commission see: Manufacturers' Light & Heat Co. v. Ott, 215 Fed. 940, 946 et seq. (1914).

11 For an extensive discussion of the true nature of the functions of the modern public utilities commission, see Thomas Porter Hardman: "The Extent of the Finality of Commissions' Rate Regulation." 28 W. Va. L. Quar. 111, 115-121 (1922).
of these tribunals makes it highly improper that they should thus
be definitely classed with the purely political machinery of gov-
ernment. The incompatibility of the functions of such a public
utilities department with that position is demonstrated by history,
as Professor Cross of Michigan has shown in his recent article in
the Michigan Law Review: “Judges in the British Cabinet and the
Struggle Which Led to Their Exclusion After 1806.” Executive
justice has always proved to be uncertain political justice.

The 1921 Administrative Code of Washington is one of the
latest examples of this rather ostentatious reassertion of the theor-
etically fundamental administrative character of modern state-
wide comprehensive utility regulation. It abolished the Public
Service Commission and established in the place thereof, as one of
the ten departments of the state government, a Department of
Public Works presided over by a director and subdivided into
three divisions: Transportation, Public Utilities, and Highways,
each in charge of a supervisor. Under this system the routine
regulation of transportation services is separated from that of
other public utilities, although provision is made for a common
regulation by a body, made up of the director of public works and
supervisors of the Divisions of Transportation and Public Utilities,
empowered to hear and determine all matters arising under either
of said divisions which they deem of sufficient importance, or upon
request of any person affected by a separate decision of any of said
officials. Not only is this later development of the Massachusetts
Plan subject to all the infirmities of the original, but it goes even
further in violation of the primal common law conceptions embod-
ied in our third objection in enabling one, who, to all intents and
purposes, is a judge to sit in review upon the validity and justice
of his own decision.

A second type of experiment seeking to accomplish our goal
seems to have been an outgrowth of the recent country-wide investi-
gation of the electric railway situation by the Federal Electric
Railways Commission, and consists in a combination of the first
and third stages which we have noted in the development of public
regulation—that is to say a primarily local regulation with the
state-wide commission exercising a general supervising and appel-
late jurisdiction. The consensus of opinion voiced by the host of
practical and theoretical expert witnesses who testified in the

14 This commission was appointed by Pres. Wilson, May 31, 1919, and reported to
the President July 28, 1920. See Wilcox, The Electric Railway Problem, 1921.
course of that investigation was that the true solution probably lay along the lines of some such combination of local and state-wide regulation. In December 1921\(^{15}\) the City of Pittsburgh, Pennsylvania, entered upon a ten year experimental program of this type, subject to the approval of the State Public Service Commission whereby a local board of control representing both the city and the street railway company will in the first instance regulate the details of service, facilities, and finance, and any rate matters not involving an increase in the present fare, with the state commission acting in a supervisory capacity. The Cleveland Plan of purely local regulation although strongly advocated was rejected in favor of the new departure. While the Pittsburgh Plan is just getting under way it seems to hold out real possibilities, chiefly in that it promises to eliminate the objection of unreasonable delay, and to introduce a much to be desired spirit of co-operation between the utility proprietor and the public served.\(^{16}\)

Kansas seemed to have seized the leadership from Massachusetts in this matter when in 1920 she introduced what may be termed a third type of experiment by converting her Public Utilities Commission into a state-wide Court of Industrial Relations,\(^{17}\) possessing similar powers as to initiating proceedings, etc., but extending its jurisdiction to the regulation of labor and many enterprises not strictly public utilities on the ground that these had become affected with a public interest. Although for a time it appeared as if this might really be the next step, since it was directly in line with the historical trend from executive tribunals to judicial courts, it is now seen to have been a juristic mirage, for at the very next session of the legislature\(^{18}\) the regulation of public service enterprises was withdrawn from the new court and vested again in the re-established Public Utilities Commission.

New York presented a fourth type of experiment when the legislature of 1921\(^{19}\) modified the original regulatory scheme adopted in 1907 by the inauguration of a dual system consisting of a continuation of the modern type commission to control public utilities in general, under the name of the "Public Service Commis-

---

\(^{15}\) December 20, 1921. Approved by the Pennsylvania Public Service Commission, Feb. 24, 1922.

\(^{16}\) That there is likely to be a more general return to some such combination of local and state-wide regulation is indicated by the fact that Arkansas by Act No. 124, Laws 1921, adopted the policy of local regulation of utilities operating within municipalities. This is also the policy prevailing in California. See Caliz. Const. art. 11, § 19 and art. 12, § 23, as amended in 1911 and 1914 respectively.

\(^{17}\) Kansas Laws, Special Sess. 1920, ch. 29 (January 24, 1920).

\(^{18}\) Laws 1921, ch. 260.

\(^{19}\) Laws 1921, ch. 134, amending ch. 48 of the Consolidated Laws.
sion," and a newly created state-wide "Transit Commission" of the old second stage type, entrusted with jurisdiction over railroads, street railroads, and stage or omnibus lines so far as the same are operated within cities of over one million population. It will be seen at a glance that this latest New York style harks back a half century to the establishment of public regulation of grain elevators in cities of a specified population, held constitutional in the famous cases of *Munn v. Illinois* and *People v. Budd.* On the whole, the most promising feature of this New York legislation is the obvious solicitude exhibited for the stability of the office of commissioner. The Public Service Commissioners, for example, are appointed for a term of ten years, at an annual salary of $15,000, and can only be removed upon a joint resolution of both houses of the legislature requiring the concurrence of two-thirds of all the members elected to each house, and even then only for cause shown and entered upon the legislative journal together with the record of votes of the yeas and nays. The Transit Commissioners, though appointed for but five years and removable by the governor for enumerated causes, are protected by specified notice, and an opportunity for a public hearing, with the further requirement that the governor shall file with the Secretary of State, a complete statement of the charges, findings and the entire record. There we have a direct answer to the objection to political influence and the additional advantage of the stabilization of the bases of regulation. Unfortunately, these constitutional sounding phrases are embodied not in a constitutional amendment, but simply in a statute subject to all the vulnerability of ordinary legislation. Another noteworthy feature of this act is that it seems to provide a really practicable means of bringing about that expedition of decision which the nature of the subject-matter demands, and which has ever proven one of the most elusive aims of all the many schemes of public regulation. The failure of the modern public utility commission to act without apparently unreasonable delay has been in the last analysis the simple result of overburdening the comparatively few human beings that constituted the regulating body. They have been called upon to exercise a state-wide juris-

---

20 Although in form and legal effect a state-wide commission the "Transit Commission" was a political measure aimed directly at the New York City street railway situation, this "Public Service Commission Law of 1921" constituting a "ripper legislation" drive by the up-state republican majority to break the throttle-hold of Tammany Hall against the reorganization of the rapid transit system of the five boroughs.

21 94 U. S. 113 (1877).

22 117 N. Y. 1 (1899).
diction involving a comparatively detailed supervision and control over a multitude of highly important and highly technical and intricate fact situations, the downright physical and mental drudgery of which is comparable only to that unloaded by the chancellor upon the master, or by the modern court upon the referee. It is interesting to note that the New York corrective for this crying defect in our present system of regulation has been the simple expedient of extending an analogous power of reference to these so-called quasi-judicial tribunals. Thus it is provided in section eight:

"The Commission, by certificate filed in its office, may, from time to time, specially authorize any officer or employee of the commission to conduct any investigation or hearing, which the commission is authorized to conduct, to take testimony in respect of the subject or matter under investigation, and report the testimony to the commission, and in the conduct of such investigation or hearing, such officer or employee shall have all the powers of a commissioner."23

Here we have a new application of an age old procedure, as we are reminded by Professor Kocourek's recent article in the Journal of the American Judicature Society, entitled "Speedy Justice in Ancient Rome,"24 wherein he shows that the strength of the Praetorian Formulary System was its speedy determination of causes by means of the extensive reference of stated cases to the judices, or official class of referees corresponding to our own masters in chancery.25

To what a pass have we come! First the courts acting retroactively are too slow, therefore we create commissions; now the commissions delay justice, so we patch them up by granting them more of the powers of a court. If history is to be credited this is but another illustration of the normal process toward the ultimate crystallization of this so-called administrative experiment into a true court of special jurisdiction, and appropriate functions, as was the case with our Chancery Court System.

It will be noted, however, that not one of these late attempts to devise a more efficient public regulation in the utility field has dealt with the third major defect mentioned, that of the inconsistency of the regulating body occupying at the same time in the same

23 Italics ours.
25 For an interesting historical sketch predating our ancient order of Masters in Chancery upon analogy to the Roman judices, see "A Treatise of the Maisters of the Chaucerie," Hargrave's Law Tracts (1787).
cause the role of prosecutor, judge, jury, and sheriff. That this defect has not been more emphasized is probably due to its strategic position. On the one hand, the general public feel that this power of the commission to initiate proceedings is a vital protection in view of the paramount public interest, and the usual condition of apathy illustrated by the ironical expression "The public's business is nobody's business." The utility proprietors on the other hand have not complained, chiefly because in ninety-nine cases out of a hundred there is an outside party plaintiff, and again in most states they have been fairly dealt with even upon investigations and proceedings instituted by the commissions. As we return, however, to the new era of normalcy with wages and commodity prices readjusting more acutely than utility rates, which is sure to be the condition, since the utilities could not accumulate a war surplus to aid now in writing off losses, we may expect greater pressure to be brought upon the commissions to exercise their power of initiative, and accelerate the lowering of utility rates.

The broad visioned minds that vanguard our juristic progress have discerned the tremendous significance of this objection, and have voiced a warning that here we have a most difficult and vital problem which must be solved. It was no mere coincidence that two such leaders of our day as Dean Pound, the scholar, and Secretary Hughes, the lawyer and statesman, coming from their diverse environments to deliver addresses upon the occasion of the celebration of the beginning of the second century of the Harvard Law School, June 1920, should have emphasized this autocratic combination of essentially independent powers as the outstanding defect in our present system of regulation by so-called administrative bodies.

Referring to the dangers of intolerable personal government through such autocratic commissions, Mr. Hughes concluded:

"If the courts cannot deal with administrative questions, should we not at least establish administrative tribunals which, expert through special and continuous study of a particular field, should by being free of the animus or unconscious bias of the prosecutor bring to the decisions of questions of fact the same detachment and standards of impartial judgment which have made our courts, after proper allowance for all

---

just criticism, the most successful in their working of all the
departments of free government? Is it not time to reorganize
administrative agencies not in the interest of theoretical nicety
in division of powers, but so as to vest in different officials
the distinct functions of prosecutor and judge?"

It is clear that, unless the need for some such regulatory system
as we now have is obviated by both public ownership and public
operation throughout the public utility field, this third objection
must be overcome. As we have seen, progress has been made to-
ward the elimination of the other major defects, and while it
is quite evident that no one of the recent experiments that we
have reviewed represents the next step in the same sense of perma-
nent contribution that the comprehensive regulation of the third
stage of the development of public supervision did over the spe-
cialized method of the second stage of that development, yet the
experience gained in these diverse attempts to achieve the desired
goal has not been without value. In the light of this experience,
a combination of the Massachusetts Plan with the modification
thereof presented in the Washington Administrative Code seems
best adapted to achieve the next practicable step.

It is accordingly suggested that the next step toward the efficient
regulation of public service enterprises should consist of the estab-
lishment of a Department of Public Utilities as a subordinate
branch of the executive department of the state government, to be
presided over by a director, a technical expert, whose business it
should be to make preliminary investigation of complaints against
public utilities; to initiate proceedings when the public interest re-
quires it, taking over in this respect the initiatory power now pos-
sessed by the commission, and in general to relieve the commission
of the great mass of detail with which it is now burdened. Thus a
threefold improvement would be effected in that it would remove
the drudgery of detail that has been the chief cause of delay in
action; effectually divorce the function of prosecutor from that
of judge; and provide for the expression of the popular will
through an essentially political official properly responsible to the
political department of the state government. Simultaneously, there
should be created, by constitutional amendment if necessary, as
has been done in Virginia, Louisiana, and other states, a tribu-

27 This feature of the Virginia Constitution is discussed by Mr. Justice Holmes in
28 LA. CONST. OF 1921, art. VI.
nal frankly equipped with appropriate legislative and judicial powers, the latter especially, that it may deal not only with administrative matters but also with that great body of determinations in this field which is essentially judicial. That would bring our written law into accord with the actuality of the law as applied, and successfully remedy the increasing mischief of "ripper legislation." 29

The personnel of such a tribunal should be non-partisan; the qualifications for membership such as to insure commissioners of breadth of training, experience, and capacity; and the tenure of office and remuneration of a nature to secure stability of policies, and an independence or impartiality of action, guaranteeing freedom from every suspicion of political influence.

Despite the remarkable similarity between the nature, functions and tendencies of the modern public utility commission and the historical development of chancery from an executive tribunal, "twin sister of the Court of Star Chamber" 30 into a true court, the time does not seem at hand for the probably ultimate metamorphosis of the commission into a formal court of justice, presided over solely by law-trained judges. We must remember that, just as it was with chancery in the sixteenth century, this is a field in which today both the law and the tribunal that administers it are in the making; that the commissions are still primitive bodies, the outgrowth of a popular attempt to do without law; and that, while as Dean Pound suggests, "Not the least task of the common-law lawyers of the future will be to impose a legal yoke upon these commissions, as Coke and his fellows did upon the organs of executive justice in Tudor and Stuart England," 31 yet this task must be approached with a circumspection that will not awaken popular distrust of the purpose, nor deprive the commission-evolved court of the future of its own peculiar functions for justice in the public utility field.

29 That "ripper legislation" is a growing evil is demonstrated by a comparative study of the tables of the personnel of the Public Service Commissions appearing in PUBLIC UTILITIES REPORTS, 1920 F., and those in the same reports volume 1921 D., a ten months' period, which show that in that short time approximately one-fifth of these commissions had experienced a complete change of personnel, and in a majority of instances this was the result of "ripper legislation" abolishing the old commission entirely and substituting a similar body under a new name.

30 See extract from MAITLAND ON EQUITY; POUND, READINGS ON THE HISTORY AND SYSTEM OF THE COMMON LAW, 2 ed. (1913), and 1 SPENCE, EQUITABLE JURISDICTION, chapters III and IV (1846).