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## *Discrimination by Railroads and Other Public Utilities*, by Beverly Lake (1947)

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the evidence where it begins to get close. Then, if there is a lot of evidence on one side and a lot of evidence on the other side, then the appropriate and sound application of the substantial evidence rule is to uphold the administrative body. But if the administrative body has only a little bit of evidence compared with a good deal of evidence on the other side, then you can argue that that is not substantial and I think that is the way the argument would have to run.<sup>21</sup>

In other words, in reviewing administrative action Justice lays aside her scales and takes up a yardstick.

In sum, then, there is little in this volume which will contribute to the understanding of either the Administrative Procedure Act or the administrative process to which it applies. And there is even less in it to support Dean Vanderbilt's thesis that "it is decidedly possible since the passage of the Administrative Procedure Act for any competent lawyer to comprehend federal administrative law."<sup>22</sup>

VERN COUNTRYMAN

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DISCRIMINATION BY RAILROADS AND OTHER PUBLIC UTILITIES, by I. Beverly Lake. Raleigh. Edwards & Broughton Co. 1947 Pp. vii + 316.

Interregional conflicts, such as those involved in the reclamation program and freight rates, are producing numerous studies. One of these is a doctoral thesis on discrimination, in its invidious sense, in connection with railroad and other utility rates and services.

Prefaced by a chapter summarizing with admirable clarity and conciseness the history of politico-legal justifications for governmental interference with business, the conclusion drawn by Professor Lake is that it is a function of government to intervene whenever a business by discrimination inflicts serious injury which jeopardizes the economic freedom of a large number of individuals. Economic freedom is defined as "near-equality of bargaining power," in this connection (p. 59).

Although adjustment of prices and services to redress an imbalance more extreme than near-equality of bargaining power, subject to the requirement of a fair return, seems to be the standard of governmental planning advocated by Professor Lake, he would recognize other specific policies as legitimate. For example, though cost and demand factors are equivalent, the policy against governmental interference should prevail when the adjustment contended for is so slight as to be difficult to work out in proportion to the injury caused by the discrimination, or when the disfavored patron cannot show that the discrimination disturbs his competitive position or imposes on him an unfair burden of the costs, unless the favors are in the nature of corruption of government officials or result in impairment of the utility's ability to serve (pp. 112-115).

Where the cost-demand complex is variable, the policy in favor of inter-utility competition gives the edge to "governmental policing of private planning" over "governmental planning" (p. 156), but the utility must not be allowed to "smuggle in a planned economy of its own" (p. 186). These generalities demonstrate the difficulty of adjusting policy to a base of economic speculation. Some economists would say that when Professor Lake discusses joint costs he also means "alternative" and "common" costs. Furthermore, economists disagree among themselves on the selection of a time-span for consideration, and the emphasis to be given to

<sup>21</sup> p. 594.

<sup>22</sup> p. 4.

nonseparable costs in determining the effect of acquiring potential demand in reduction of unit cost. Little wonder that policy as well as method is on a trial and error basis. It is difficult to decide whether Professor Lake favors utility, court, or commission planning, or a combination, and if a combination, in what proportion. The chapter on differences based on distance demonstrates that legislative planning does not usually set such a clear policy that it has very much force.

Although there seems to this reviewer to be some ambiguity about the author's conclusion on the utility's right to a fair return when it does not render both interstate and intrastate services, and some doubt as to his reasons for the right to a fair return when it does (pp. 69-73), the book contains an excellent analysis of standing to invoke relief. There is also an informative chapter on remedies and penalties.

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