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## Stason, Estep & Pierce: *Atoms and the Law*

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## RECENT BOOKS

ATOMS AND THE LAW. By *E. Blythe Stason, Samuel D. Estep, and William J. Pierce*. Ann Arbor: The University of Michigan Law School. 1959. Pp. xxvii, 1512. \$15.00

This volume, the latest addition to the Michigan Legal Publications, is the principal fruit of a research undertaking which has extended over eight years and which is still in process. Although the members of the Michigan law faculty who are named as authors have been the main contributors to this volume, its diverse contents include the work of several other scholars. Indeed, the book is not an integrated study but a compilation of a number of monographs which deal with some important problem areas that have emerged in the course of the effort to fit the phenomenon of man-made, man-controlled radioactivity into the complex economies of our own and other nations.

The volume's spread in subject matter has suggested the need for a division of labor in the task of reviewing, and my stint is limited to Parts III, IV, and V, leaving to other hands the appraisal of the pioneering inquiry into the application of the principles of tort liability and workmen's compensation laws to radiation injuries.

The first of the parts which fall within my purview is the most extensive of the three: State Regulation of Atomic Energy. This field of responsibility is one into which the states have only recently been venturing; yet, in the area of health and safety regulation, the enactment of new laws and the issuance of administrative rules are already becoming widespread. This the authors are able to demonstrate by an inquiry which has been kept to manageable dimension by being focused mainly on ten states: California, Illinois, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, and Wisconsin.

State regulatory action has been reaching beyond the modest preliminary arrangements provided under the Model Act recommended by the Council of State Governments on the basis of the act developed by the New England Governors Committee on Atomic Energy and adopted in several New England states. This act conferred no new regulatory powers, a condition that could last only as long as the states remained content to let the Federal Government exercise the main regulatory responsibilities.

As the states have sought to move into this regulatory field, we have all grown increasingly conscious of a problem which is examined at considerable length in Part III: the problem of federal pre-emption of regulatory authority. It is amazing but true that nearly six years after the enactment of the Atomic Energy Act of 1954, opening the door to extensive private participation in the peaceful uses of atomic energy, no one yet knows where federal power ends and state authority begins or, to put the problem in more practical terms, the extent to which they overlap.

The authors went to the Supreme Court cases bearing on federal pre-emption in various fields of regulation and, with the modicum of guidance

thus afforded, arrived at judgments which seem to me to have been sound. But they have suffered a fate common to most writers who venture to deal with the atom and the law: a new factor has been introduced into the problem—the passage of an amendment to the Atomic Energy Act.<sup>1</sup> This declares the clarification of federal-state relations to be one of its objectives, and then remains cannily silent on just what is the effect on existing state powers of the action by Congress in authorizing the AEC to cede certain of its powers to such states as it finds qualified and willing to enter agreements (revocable for cause) with the AEC for the exercise of regulatory power—within limits.

The authors have not been content merely to report the initial efforts of states to regulate the atom and to speculate as to its legitimacy. They have examined the prospects for future state regulation and have proposed a "Model State Act To Promote Atomic Energy and Control Radiation Hazards." This act embodies an interesting scheme designed to resolve a perplexing dilemma which the prospect of exercising regulatory authority over atomic energy poses for state governments. On the one hand, there is a formidable array of state agencies with jurisdiction over activities among which atomic activities must inevitably be included: agencies with authority over factories and working conditions, over sanitation, water and air pollution, foods and drugs, and other elements affecting the public health, and over public utilities and transport, to name only those agencies principally concerned. On the other hand, there is the need to have a considerable degree of uniformity in the regulations governing radiation both within a state's government and between it and other states and the federal government. Can the state agencies be ousted from their jurisdictions in favor of a central board with power to regulate radiation wherever it may be manifested? Or should the agencies' authority be preserved intact and reliance be placed on the good judgment of their several administrators to maintain a common pattern of controls?

The Michigan solution is to leave the state agencies in their familiar bailiwicks but to establish a Radiation Safety Standards Board which will include *ex officio* the heads of the chief state agencies concerned and will have power to adopt radiation safety standards and rules for their enforcement by the respective agencies. This centralizes the rule-making function while preserving decentralization in administration. It would be helpful if this scheme could be tested in one or more of those laboratories which our states are supposed to provide.

The federal law, now embodied in the Atomic Energy Act of 1954 and its increasingly numerous amendments, is the subject of a monograph by Courts Oulahan entitled "Federal Statutory and Administrative Limitations upon Atomic Activities." This monograph focuses on the rule-making and licensing functions of the AEC, and brings together in relatively brief compass a great deal of information which is not easy to come by.

<sup>1</sup> P.L. 86-373, 86th Cong., 1st sess. (1959) adding §274 to the Atomic Energy Act.

Although the monograph is the most extensive we have on its subject, the scope and intricacy of its subject have deprived the author of much room for discussion and he is obliged to deal briefly with the one major battle over the AEC's exercise of the reactor-licensing power, the PRDC case involving the issuance of a conditional construction permit for the Enrico Fermi Reactor. In my opinion he could have spared section 105 some of the attention he devoted to it: antitrust policing of the issuance of licenses to public utilities strikes me as an exercise in futility. To his careful survey of the AEC's regulatory procedures, Mr. Oulahan has added a helpful section on AEC contracting procedures.

Part V deals with International Control of Atomic Energy, and space pressures have required selectivity here. The International Atomic Energy Agency and "Soviet Russia's Role in International Cooperation for Peaceful Use of Atomic Energy" have been treated; the extensive bilateral programs of the United States and the United Kingdom and the efforts at regional cooperation by Euratom and the OEEC have been (largely) omitted. The section on the IAEA represents an up-dating of the excellent article in the *Michigan Law Review* by Professor Eric Stein and his former associate in the State Department, Bernhard G. Bechhoefer. The chapter on the USSR's program, a unique source of enlightenment on an obviously important development, is the work of Horace W. Dewey, Assistant Professor of Russian in the University of Michigan.

Parts III and V have appendices totalling nearly 150 pages. The appendix to the former brings together the texts of AEC, state, and model laws and regulations for radiation protection; the appendix to the latter, a summary of the IAEA negotiations and the texts of various documents implementing the USSR's program.

To one whose association with Atoms and the Law goes back to early times, i.e., ten years or so, when the literature of the subject was fragmentary and thin, the very existence of a thorough, well-documented volume such as this provides a striking index of the rapidity with which the law can move when compelled to find a way of order for a new and potentially hazardous technology.

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