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The Antitrust Laws of the United States of America, by A.D. Neale

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THE ANTITRUST LAWS OF THE UNITED STATES OF AMERICA. By A. D. Neale. New York: Cambridge University Press, 1960. Pp. xvi, 519. \$7.50.

This volume on American antitrust law is written for the British reader by a British civil servant. In spite of or perhaps because of this, it is a notable contribution to antitrust literature and should be of interest

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to American antitrust scholars and lawyers, and of immense value to American law students.

The book has many virtues. One is its comprehensiveness, which is unsurpassed by any single volume I have seen. The author covers the Sherman Act and the Clayton Act in detail and gives attention to the Federal Trade Commission Act and other pertinent statutes. The statutes and leading decisions are carefully discussed, and attention is also given to the procedural and enforcement aspects of the laws. Mr. Neale is at his best in dealing with the monopoly and conspiracy provisions of the Sherman Act, and his handling of these is both scholarly and thorough. He is less effective in dealing with pricing and services under the Robinson-Patman Amendment to the Clayton Act (especially 2(d) and 2(e) of the Clayton Act), an understandable weakness—albeit unfortunate since many practicing attorneys often have to ponder over parts of this section in advising their clients in such matters as furnishing services, joint advertising, promotional deals and the like. Section 2 contains tough, practical questions of great importance in the business world and I do not know of a really complete treatment of it.

Antitrust law being what it is, probably no reader will agree with all that Mr. Neale has to say about the decisions and about the rules of law, but on the whole his presentation is thorough, fair, conservative and at times penetrating. In addition the author writes with assurance on the precise meaning of Chief Justice White's sentences in the *Standard Oil*¹ and *American Tobacco*² decisions, and he makes a good case for his interpretations. I must say that this is something I cannot do; White, to me, is not comprehensible except on the broadest terms and I must admire anyone who can read him.

Another virtue of the book is the clarity and smoothness with which the author writes. The book reads well, flowing in understandable, literate sentences. The meanings are clear; the points are easy to comprehend; there is continuity. It is a joy to read.

The most interesting thing about the volume is the fact that it is written by an outsider, albeit not an unsympathetic one. Over-all, I conclude that Mr. Neale thinks well of our antitrust laws as applied to the United States. His views on the "whys" of our complex of antitrust law are well-worth reading for he is a good student of America. In writing about the motive behind these statutes and decisions he is not taken in by the technical discourses on economic theory and the like. He writes:

1. *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1 (1911).

2. *United States v. American Tobacco Co.*, 221 U.S. 106 (1911).

It seems likely that American distrust of all sources of unchecked power is a more deep-rooted and persistent motive behind the antitrust policy than any economic belief or any radical political trend. . . . In the United States the fact that some men possess power over the activities and fortunes of others is sometimes recognized as inevitable but never accepted as satisfactory. . . . In large part antitrust is the projection of these traditional American beliefs into the economic sphere.³

The author's chief dislike appears to be the Robinson-Patman Act. Here his British common law background seems to influence him and he argues that it is a mistake to spell out details in such a statute. Instead he suggests that stating broad principles in the statute, with the courts filling in the details, is a better approach. Without defending the exact language used in Robinson-Patman, I cannot agree with his position as to all phases of antitrust. Section 5 of the FTC Act is broad and our courts were almost completely without imagination in filling it out; the existence of the Clayton Act, as amended, is all that has saved Section 5 from near utter futility. General policy has worked pretty well as to monopoly, but it is not the tool for pricing matters.

As mentioned, the author is not unfavorable to our antitrust as limited to this country, but he does not advocate its export in large chunks to Great Britain. He sees fundamental differences in the two peoples and in their attitudes toward power. Two quotations will point up his thinking here.

One of the profoundest institutional differences between the two countries is the absence in the United States of anything corresponding to the amorphous but recognizable assemblage of public bodies and personages that we know in Britain as 'the Establishment'; and this has much to do, both as cause and effect, with American distrust of authority *per se*. In general the possession of power by established authorities arouses a much lesser degree of anxiety or resentment in Britain, where the emphasis is much more on the use of power.⁴

In short, the two basic considerations underlying antitrust—the wish to disperse economic power and the wish to rely on judicial processes to do so—though no doubt present to British opinion, have a lesser impact here than in the United States. And, when these considerations are removed (or at

3. P. 422.

4. P. 475.

least weakened), it follows that much more hangs on the economic pros and cons of the matter. Since it is less concerned about the mere existence of private economic power, British power of monopolies and restrictive associations is exercised; and this is essentially an economic matter.⁵

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5. P. 476.

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