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Workable Competition and Antitrust Policy, by George F. Stocking; Competition as a Dynamic Process, by Maurice Clark; Competition and Monopoly, by Mark S. Massel

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BOOK REVIEWS

WORKABLE COMPETITION AND ANTITRUST POLICY. By George W. Stocking. Nashville: Vanderbilt University Press. 1960. Pp. vii, 451. $7.50.

COMPETITION AS A DYNAMIC PROCESS. By John Maurice Clark. Washington: The Brookings Institution. 1961. Pp. xvii, 501. $7.50.

COMPETITION AND MONOPOLY. By Mark S. Massel. Washington: The Brookings Institution. 1962. Pp. xiii, 477. $6.75.

The three books under review are a rich addition to the literature relating to public policies toward production and distribution in our economy, especially the policies embodied in the antitrust laws. Two of the authors are economists who have made previous distinguished contributions to the increasing, deepening stream of thought on this subject. The third is both lawyer and economist, and is a member of the staff of the Brookings Institution from which his study and that of Professor Clark emanate.

Professor Stocking, who mentions in the Preface to his present work that he will in the near future complete a new treatment of "The Evolution of Federal Antitrust Policy," brings together in this volume ten of his articles which were published in economic and legal periodicals from 1952 to 1959. They deal with several critically important aspects of antitrust policy and enforcement. The author's concern is primarily with the effects of the development of large aggregates of private economic power on those aspects of the general welfare which economic competition has traditionally been deemed to serve. He believes in the kind of resource allocation and stimulus to beneficial economic performance which competition as long defined can secure; and he is disturbed by current tendencies to accept the unproven substitute of "workable competition." Nevertheless he examines this concept carefully and tests its results in certain situations where antitrust enforcement authorities appear to have accepted particular manifestations of it.

In several of the essays contained in the present book Professor Stocking deals successively with leading trade association cases under the Sherman and Federal Trade Commission Acts, with cases involving combinations of ownership in relation to the Sherman and Clayton Acts, and with the duPont Company's market power in the production and sale of cellophane in relation to the Supreme Court's estimate of it. With-

in several of the essays which focus on these subjects and in the first, fifth, ninth, and tenth essays which review industrial development and changing economic thought more generally, the author deals with the concept of "workable competition" itself; with the related ideas of imperfect, monopolistic, and "effective" competition and of "countervailing economic power"; and with the response of the business community, lawyers, and judges to this body of thought and to the economic phenomena with which it deals.

Necessarily the book contains more than a little repetition; but it is readable and well organized; and the reader who begins at the beginning and goes through may easily skip the passages that turn out to be repetitious. The information and thought it conveys are rewarding. The evidence the author adduces is striking, especially that which leads to the conclusion that a number of important antitrust decisions have left defendants free to exercise significantly greater economic power than a competitive market would permit. The standard of "workable competition," if applied to such situations, would involve an evaluation of the total benefits and disadvantages residing in them. Such a standard is not vaguer than due care and due process of law, which have long been applied in important areas of human affairs; but Professor Stocking rightly urges that whenever possible, definite standards based on the norm of rigorous competition be employed in the antitrust field. Alternatives and qualifications need to be equally precisely defined.

In dealing with the duPont-General Motors case,[1] Professor Stocking seems a bit less than fair to the dissenting opinion of Mr. Justice Burton;[2] but his conclusion that on the record duPont's ownership of General Motors' stock was a violation of the Sherman Act (rather than section 7 of the Clayton Act as found) seems invalid. Professor Stockings' strictures on the courts for not ordering divestiture and dissolution more freely seem less justified. It is relatively easy to urge that the Aluminum Company of America and the United Shoe Machinery Corporation, having been found in violation of the Sherman Act, should have been dismembered; but Professor Stocking does not demonstrate that there was a feasible way for the court in either instance to proceed materially farther than it did in this direction. Nor does he consider whether psychologically a single United States District Judge can realistically be expected to shoulder the enormous responsibility of dismember-

1. United States v. E. I. duPont de Nemours Co., 353 U.S. 586 (1957).

2. That opinion relied, among other evidence, on a comparison of sales by duPont to General Motors and to other automobile manufacturers as an indication that stock ownership of the former company in the latter did not significantly affect these sales. Professor Stocking, at p. 339, does not mention this factor.

ing a going concern, performing vital functions in the economy, in the absence of shocking villainy on the part of its operators. To this end, new legislation and enforcement techniques probably are needed.[3]

The approach of Professor Clark in his book contrasts in several respects with that of Professor Stocking. An article of his, published in 1940,[4] is generally credited with having originated the concept of "workable competition"; but he shifts in the present work to an emphasis on "effective competition." He does so because the term is more expressive of the achievements, especially by way of change and progress, which are possible in an economic scheme that departs as widely from the classical concept of "pure" or "perfect" competition as do the operations of production and distribution in the United States today. Professor Clark believes that in determining whether these operations bring about satisfactory results, either in relation to the antitrust laws or for other purposes, achievements must be balanced against disadvantages in relation to the whole range of values an economic system can serve. Such an appraisal must be undertaken in relation to specific situations, and can hardly be governed to any large extent by "per se" rules derived from classical economics.

Particularly to be taken into account in gauging the operations of the economy are the factors of time and geographical distance, which necessarily are involved in business adjustments and in the rivalry of one enterprise with another, but which classical economic theory ignores. Not merely, as with Professor Stocking, a desirable absence of private economic power, especially over prices, but also the duration of such power as there is and the benefits that may flow from its use should be considered. The possible benefits include product improvement, technological advance, and reduction of the lethal, below-cost pricing that may flow from unrestrained competition when fixed charges are heavy.[5] Professor Clark, however, is no apologist for big business or for the existing state of affairs. Clearly he would not tolerate continued private power over prices, unchecked by business rivalry that promised to undercut it; and he is vigorous in his condemnation of corrupt modern advertising and the current control of mass media of communication in the pursuit of business profits.

3. See Nathan, Book Review, 38 IND. L.J. 99 (1962) and Fuchs, review of Kaysen and Turner, *Antitrust Policy: An Economic and Legal Analysis,* 109 U. PA. L. REV. 146 (1960), for summaries of recent works which contain important suggestions for new legislation of this variety.

4. *Toward a Concept of Workable Competition,* 30 AM. ECON. REV. SUPP. 241 (1940).

5. Professor Clark brought out the significance of this factor in a path-breaking book, THE ECONOMICS OF OVERHEAD COSTS (1923).

Professor Clark's book begins with a summary of the history of economic thought about competition, followed by an analysis of the many, varied market situations that currently exist, accompanied by his appraisal of the benefits and disadvantages, from a public point of view, that reside in them. He proceeds, not by means of analyses of data drawn from court records and other documents, as does Professor Stocking, but by making realistic estimates of situations which he describes. He does not attempt to show how such finely differentiated judgments as he makes could be undertaken in the administration of the laws. His analyses are, nevertheless, extremely valuable guides to argument and decision in particular situations under the laws; and his conclusions as to over-all policy should become widely influential in discussion and legislation.

Mr. Massel in his book focuses directly upon the antitrust statutes and related laws, and on their administration. He examines first the relevant goals in public policy, emphasizing their complexity and their inconsistency when the entire economy and the many kinds of regulatory legislation are taken into account. When recognition is given to the variety of ends to be served and to the enormously varied market situations to which Professor Clark, for example, points, the basic question becomes whether a reasonable degree of certainty in the operation of the laws, especially the antitrust laws, can be achieved without attempting to force the economy into a rigid mold that will thwart human satisfactions and stifle progress.

In his exploration of this question, Mr. Massel discusses the issues that arise under the numerous provisions and applications of the statutes we have, and points out where and how greater knowledge might lead to increased certainty and a finer adaptation of the laws to the matters to be governed. In arriving at conclusions Mr. Massel gives due attention to business practicality and to administrative factors involving the work of advocates, deciding officials and judges, the costs of proceedings, and the feasibility of different kinds of remedies. Especially valuable is his relation of the functions of lawyers to those of economists in antitrust litigation, and his exposition of the operation of consent orders and decrees. The entire text is, in effect, an excellent critical commentary, with numerous suggestions for research and for improvements to serve economic and social purposes. A useful accompaniment to the text is the body of references to statutes, judicial and administrative decisions, literature, and legislative hearings, which occupies 127 pages at the back of the book and lists nearly the entire range of available material.

With the publication of these books the field of antitrust law and policy is brought much closer than before to a comprehensive formulation. Professor Stocking refers to the Report of the Attorney General's Committee to Study the Antitrust Laws, whether justly or not, as the "businessman's guide through antitrust." These three books, taken together, constitute the thoughtful person's best available guide to the same abstruse but fascinating subject.

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LINCOLN AS A LAWYER. By John P. Frank. Urbana: University of Illinois Press. 1961. Pp. xiv, 144. $1.45. (paper cover).

In the vast body of Lincoln literature, A. Lincoln the lawyer has not been neglected. In addition to a number of reminiscences, articles and pamphlets, three major works have been concerned with his professional career. In 1906, Frederick Trevor Hill wrote *Lincoln The Lawyer,* a study of Lincoln's period at the bar and the legal aspects of his later career. In 1936, on the eve of the centennial of Lincoln's admission to the bar, Albert A. Woldman published a second full scale analysis.[1] In 1961, John J. Duff, a New York practicing lawyer, issued a new book.[2] Lawyer Lincoln has also been described in the major biographies by Beveridge, Sandburg, Thomas and others.

With the exception of the Duff book published in 1961, most of the writing about lawyer Lincoln has been of limited worth. It has been marked by a number of unhistoric characteristics, including implicit apologies for the fact that he was a lawyer at all. (Popular mythology would have preferred that he had been a soldier, an Indian scout, or, God forbid, a physician.) The imperfections of the prior art justified Duff's excellent book. John P. Frank's book is also justified by the imperfections of the previous works. In addition, Frank approaches the subject from a wholly new standpoint. The previous books have been principally expositions of the *facts* of Lincoln's career as an attorney. Having examined all of the materials available, Frank writes about what kind of a lawyer Lincoln was with reference to the traditional criteria by which lawyers evaluate one another professionally. Lincoln practiced law for twenty-five of the thirty-five years of his adult life. As stated by Frank,

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1. WOLDMAN, LAWYER LINCOLN (1936).
2. DUFF, A. LINCOLN, PRAIRIE LAWYER (1961).