Reviews

Arnold, Thurman W., *The Bottlenecks of Business.* Reynal & Hitchcock. New York 1940. (xi and 335 pp.; $2.50)

Hamilton, Walton H., *The Pattern of Competition.* Columbia University Press. New York 1940. (vii and 106 pp.; $1.25)

Hamilton, Walton and **Irene Till,** *Antitrust in Action.* Monograph No. 16, printed for the use of the Temporary National Economic Committee. U. S. Government Printing Office. Washington, D. C. 1941. (vii and 146 pp.; $0.20)

Handler, Milton, *A Study of the Construction and Enforcement of the Federal Antitrust Laws.* Monograph No. 38, printed for the use of the Temporary National Economic Committee. U. S. Government Printing Office. Washington, D. C. 1941. (vii and 106 pp.; $0.15)

Watkins, Myron W., and The Division of Industrial Economics of The Conference Board, *Public Regulation of Competitive Practises in Business Enterprise.* National Industrial Conference Board, Inc. New York 1940. (xxi and 355 pp.; $5.00)

Simpson, Kemper, *Big Business, Efficiency and Fascism.* An Appraisal of the Efficiency of Large Corporations and of their Threat to Democracy. Harper & Brothers. New York and London 1941. (x and 203 pp.; $2.50)

The American economic scene is dominated by monopolies or monopolistic groups to a far greater extent than the public has ever assumed. The antitrust laws have been unable to check the growth of such tendencies and may in a certain way even have contributed to it.[1] This, in short, is the picture unfolded in the hearings of the Congressional TNEC (Temporary National Economic Committee), in its over 20,000 printed pages of testimony and 3,300 exhibits (altogether 31 volumes, and 6 supplements, of records of hearings), besides 43 monographs.[2] Here then is where problems arise whose solution is of the utmost importance for the entire set-up

[1] See the testimony of Thorp and Arnold in *Hearings before the Temporary National Economic Committee,* U. S. Government Printing Office. Washington, D. C., part 1 (1939, *Economic Prologue),* pp. 112-113.

[2] See especially Monographs No. 17, *Problems of Small Business,* by J. H. Cover, N. H. Engle, E. D. Strong, D. R. Nehemkis Jr., W. Saunders, H. Vatter and H. H. Wein; and No. 27, *The Structure of Industry* by W. L. Thorp; and *Final Report and Recommendations of the Temporary National Economic Committee,* U. S. Senate, 77th Congress, 1st Session, Document No. 35, U. S. Government Printing Office, Washington, D. C. 1941, pp. 90-91—See also *Hearings.....,* part 30 (1940, *Technology and Concentration of Economic Power).*

of present-day industrial society. The publications under review do not solve these problems. They do not answer the question of whether monopoly does—or must—hamper or further technological progress,[1] whether such progress is or is not inseparable from concentration, whether it does reduce the consumer's chance to satisfy his needs, or does not, letting him rather, in the long run, enjoy benefits hitherto unobtainable, whether it must or must not result in a stagnation of the productive forces that could be overcome by totalitarian regimentation only. What the authors are concerned with is but the problem of how monopolization increases, how this process can be prevented, and how abuses can be checked. Then, of course, the questions to be answered are merely factual ones. It is not the viewpoint of society as a whole that prevails but that of the victims of specific monopolistic practices.[2]

This reviewer's critical approach should not, however, be understood as belittling the tremendous importance of the publications. The authors perform a real public service by offering proof upon proof and by making accessible to many the new facts which were hitherto known to only a few. If they do not analyze these facts in their interdependence nor the social functions of economic monopoly and the trends inherent in it in their relation to the general economic mechanism of society, they only follow the same trend as that underlying the TNEC's approach: also the TNEC investigation's central theme has only been the efficiency or inefficiency of the existing legal means to check monopoly.[3]

The main aspect of monopoly in modern society is the disruption of the "automatic" relation between supply and demand. A dwindling demand no longer necessarily produces lower prices, but rather a shrinkage of production whilst prices remain rigid. Technical improvements increase unemployment and corporate profits, but often do not result in lower retail prices.

The industrial development of the U. S. has been made possible, or at least enhanced, by the barrier of protective tariffs.[4] In the shadow of this wall, an enormous concentration process has gone on for years. It is a sort of vicious circle. Mass production nowadays requires investments of such a size that small or middle-sized enterprises, as a rule, are unable to afford them. But the big corporation then desires protection against "unreasonable," "cutthroat" competition. And in order to cover at least their huge overhead expenses, such corporations require a reasonably steady sale.

[1]See Monograph No. 22, *Technology in Our Economy*, by H. D. Anderson.

[2]See Monograph No. 7, *Measurement of the Social Performance of Business*, by T. J. Kreps and K. R. Wright, which, however, is not concerned with the relation between monopolies and society as a whole, but rather with the "social performance" of business in general, measured in terms of "criteria advanced by such responsible business groups as the National Association of Manufacturers and the United States Chamber of Commerce" (p. ix). This "social audit of business" refers to the period 1919 to 1938 and is "limited to only six measurements," to wit: "Employment," "Production," "Consumer effort commanded," "Consumer funds absorbed," "Payrolls" and "Dividends and Interest" (pp. 3-4).

[3]See *Final Report*....., pp. 20-21 and 30.

[4]See Monographs No. 6, *Export Prices and Export Cartels*, by M. Gilbert and P. D. Dickens, and No. 10, *Industrial Concentration and Tariffs*, by C. L. James, E. C. Welsh and G. Arneson.

Hence their tendency to secure "fair" competition[1] or to exclude competition altogether, or to shift it into fields where the investments may not be endangered (advertising campaigns instead of price wars). All their demands ultimately culminate in the demand of the investor that the state should prevent competition outright and abolish freedom of trade. "In instances competition itself has become the mother of restraint . . ." (Hamilton, p. 95).[2]

But what is a big corporation? It has been shown to the TNEC that one corporation produces 100 per cent of the national output of aluminum; 3 produce 86 per cent of the output of automobiles; 3 manufacture 90 per cent of all cans; 3, 80 per cent of all cigarettes; 4, 78 per cent of the copper; 2, 95 per cent of the plate glass, and so on.[3] Bigness can only be determined by comparisons among competitors in a given field. A company with a relatively small capital might be a monopoly. If radium or tungsten could be found in the United States, a corporation with a few million dollars might control the entire output; on the other hand, a corporation with a capital of hundreds of millions might conceivably, in another field, only control a small percentage.

The bigness of corporations has also been measured, e.g. in W. Thorp's testimony before the TNEC,[4] in terms of balance-sheet figures, such as corporative assets or income. It has been reported that, in 1937, 394 American corporations, i.e., less than 0.1 per cent of the total, owned about 45 per cent of all corporate assets, whereas 228,721 corporations, i.e., 55 per cent of the total, reported less than 1.5 per cent of the assets.[5] But for the purpose of measuring the importance of corporations with respect to their position in the market, only their percentage in the total of annual sales or output gives us the right measuring rod. Balance-sheet figures are more important for the much discussed problem of the efficiency of larger corporations as compared with the medium-sized ones.

Kemper Simpson[6] comes to the conclusion that it is the medium-sized corporation rather than the giant one which operates with the optimum of efficiency. But the computing methods on which he bases his assertion might easily be challenged as not being reliable enough to be conclusive. Comparing costs as shown in balance-sheets of different companies without checking every basic item always exposes the comparison to the criticism that the wrong figures may have been compared or that a special situation has not been given enough weight.[7]

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[1]Which in itself may already be restraint of trade. If the scope of the antitrust laws is to "unleash the productive forces for the benefit of consumers" (Arnold, p. 14), only "cutthroat" competition would do. But that would mean, nowadays, the possibilities of sudden unemployment of huge numbers of workers and the loss of huge amounts of investments. "Confidence" is what business needs. Hence the tendency to permit "reasonable" restraint of trade, a concept, by the way, which is not to be found in the Sherman Act itself, but was interpreted into it by the U. S. Supreme Court *(Standard Oil Co. of New Jersey v. United States, [1911] 221 U. S. 1).*

[2]See also Hamilton-Till, pp. 19-20.

[3]See W. Thorp, in *Hearings*....., part 1, p. 137.

[4]*Hearings*....., part 1, pp. 81-156; see also O'Mahoney, in: *Final Report*....., pp. 678f.

[5]Statistics of Income for 1937, quoted by O'Mahoney, *supra*, p. 679.

[6]See also Monograph No. 13, *Relative Efficiency of Large, Medium-sized and Small Business*, by the Federal Trade Commission, in which study Simpson collaborated.

[7]How contradictory (and, as a whole, inconclusive) this kind of comparative investigation generally is, is demonstrated in Monograph No. 21, *Competition and Monopoly in American Industry*, by C. Wilcox, pp. 309f.

Thurman W. Arnold, the Assistant Attorney General in charge of the ATD (Antitrust Division), has done much more than anyone before him to protect the consumers from being "milked" by monopolistic groups. Among his many publications his newest book stands out as the credo of a crusader who sincerely believes that the "power of the few" might be broken by a better antitrust law and a better enforcement procedure. But he, too, is only concerned with the legal angle. He says that the evil is not bigness in itself, but only the abuse of it,—in other words, he takes the monopoly for granted and considers it acceptable where it "does increase the efficiency of production or distribution and passes savings on to the consumer" (p. 125).

The automobile industry would be such a case. In 1938 there were only 11 companies or company groups in the passenger car market, 3 of which together controlled about 89 per cent of the total sales.[1] Except in the minor field of installment financing, where a test case is pending, the auto industry seems to have behaved so that the ATD had no cause to institute any action against it. Nevertheless, and even if we admit that in the formative years of the industry, i.e., until after the creation of General Motors, the application of modern inventions has brought the price of the low-price car down to the present level, the "competition" that is going on nowadays between the different companies might better be called a mock competition: there is practically no competition in terms of prices among the several makes;[2] what appears as such is a competition in gadgets of insignificant value but of a certain sales appeal, and a competition in advertising. For years, ever since "the coming of age" of the industry, sales volume, price and production have not been automatically interdependent as should be the case in a truly competitive market.[3]

We do not know for certain whether this condition of the car market has been brought about through "artificial" means, such as illegal agreements among the manufacturers (no evidence has so far been found) or through, what we may call, "natural" means, such as "price leadership" of one of the big manufacturers, whose prices may voluntarily be accepted by the competitors as leads (a wholly legal situation, as far as the antitrust laws are concerned).[4] We use the terms "artificial" and "natural" to differentiate

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[1]See Monograph No. 36, *Reports of the Federal Trade Commission*, part III (Report on Motor Vehicle Industry Inquiry), pp. 259f.

[2]"Competition of manufacturers with respect to passenger cars in the low-price class is more in volume than in prices . . ." *(ibid.*, p. 262).

[3]It has been said that the rigidity of car prices is, at least partly, due to the circumstance that they are now at such a low level that even a drop of, let us say, $100 in a particular make of car would not yield a rise in the number of prospective buyers sufficient to secure continuance of a satisfactory rate of profit in spite of the huge new investments which would be required to expand plant capacity to the extent needed to make such an increase of production possible. Undoubtedly, installment sales and the convenience of buying used cars have already tapped the reservoir of low income groups otherwise available as buyers of cheaper cars. Nevertheless, there is also no doubt that hundreds of thousands of used car buyers would prefer to buy new cars at a lower price level. However, existing manufacturers have no reason to be dissatisfied with the present set-up of the car market and therefore are induced to shun such a major venture as a price war or, what would practically be the same, the introduction of revolutionary technical improvements, such as an engine consuming less gasoline or a filter making oil changes forever unnecessary. Incidentally, there is still another reason against such innovations: they might endanger the interests which the groups controlling the auto industry have in the gasoline and oil business.

[4]See Handler, pp. 40-45.

between a situation where manufacturers have to resort to "conspiracy" to create monopolistic conditions and a situation where they need not do so, i.e., where existing overcapacity and enormity of necessary investments discourage quite "naturally" potential competitors and thus protect the present manufacturers. Gardiner C. Means, in his brilliant 1935 paper on *Industrial Prices and their Relative Inflexibility*,[1] has given a very convincing explanation of how car prices are controlled by "natural" means, which study has been completely confirmed by the results of the TNEC investigation. The willingness of the motor-car producers to comply with the law and to refrain from "abuse" does not annihilate the monopolistic position they hold. But monopoly that complies with the antitrust legislation appears to the crusaders as rather "harmless," and that's where the crusade necessarily comes to a deadlock.

In many other fields, "natural" preponderance of a few big corporations would not as such explain the situation. "Artificial" means for creating or enhancing domineering positions are undoubtedly used, and it is against such "conspiracies in restraint of trade" that the scope of the antitrust laws is directed. But the legal fight has not been successful. Monopolistic tendencies have many ways of being put into practice, and many of them are too subtle to be caught at once by the slow and inept machinery of the law, as, e.g., the distribution of "statistical information" by trade associations, in itself a measure apparently innocent enough, but undoubtedly quite often used in lieu of open quota allocation agreements.[2] To quote some examples of violation of the antitrust laws: there is the basing point system, whose illegality, by the way, is not yet fully established.[3] Then we find, e.g., the erection of trade barriers among localities or states,[4] collusive bidding

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[1]U. S. Senate, 74th Congress, 1st Session, Document No. 13, Jan. 17, 1935.

[2]It is certainly a difficult task to prove that what on the face of it purports to be only dissemination of trade statistics might really be a conspiracy under the law. See Handler, pp. 18-29, esp. p. 19: "The entire plan has been scrutinized [by the Federal Trade Commission and the U. S. Supreme Court] to determine whether it has resulted or is likely to result in the elimination of competition. The ultimate question in every case has been whether it can fairly be said that implicit in the plan is an agreement or understanding with regard to the price or production policy to be pursued by the member of the combination . . . The fact that uniformity of prices has resulted from the operation of the plan has not been deemed conclusive of illegality."

[3]We quote from the TNEC's unanimous resolution: "Extensive hearings on basing-point systems showed that they are used in many industries as an effective device for eliminating price competition. During the last 20 years basing point systems and variations of such systems, known technically as "zone pricing systems" and "freight equalization systems," have spread widely in American industry. Many of the products of important industries are priced by basing point or analogous systems, such as iron and steel, pig iron, cement, lime, lumber and lumber products, brick, asphalt shingles and roofing, window glass, white lead, metal lath, building tile, floor tile, gypsum plaster, bolts, nuts and rivets, cast-iron soil pipe, range boilers, valves and fittings, sewer pipe, power cable, paper, salt, sugar, corn derivatives, industrial alcohol, linseed oil, fertilizer and others. The elimination of such systems under existing law would involve a costly process of prosecuting separately and individually many industries, and place a heavy burden upon antitrust enforcement appropriations. We therefore recommend that the Congress enact legislation declaring such pricing systems to be illegal" *(Final Report...*, p. 33.)—See also Monograph No. 42, *The Basing Point Problem*, by the Federal Trade Commission.

[4]See *Hearings.....*, part 29 (1941, *Interstate Trade Barriers)*, and *Final Report.....*, pp. 128-131.

in public purchases,[1] the use of patents to maintain resale price levels and other conditions (glass containers, Ethyl gasoline),[2] agreements to restrict output (Beryllium, Bausch & Lomb),[3] the prevention of the use of labor-saving machinery by labor unions (the make-work system, exclusion of efficient methods or prefabricated material),[4] agreements regarding sales conditions ("block-booking" in the motion picture industry)[5] and, to quote a few from a long list of such practices mentioned in testimony before the TNEC by Mr. J. A. Horton, Chief Examiner of the Federal Trade Commission;[6] boycott; threats; interference with sources of supply or distributing outlets; threats of patent infringement suits not made in good faith; intimidation;[7] bogus independents; allocation of territory among ostensible competitors, and so on.[8]

Plenty of evidence about methods of "restraint of trade" has also been presented by Myron W. Watkins and his collaborators. His valuable book, a "completely revised and expanded edition of the well-known Conference Board study that was first published in 1925," is a sort of handbook for the "uninitiated" business executive, showing which trade practices are undoubtedly illegal, in the light of final decisions and established procedure, what can be done without fear of prosecution, and how far the "no-man's-land" of uncertainty extends. It is certainly not the author's fault that so many of the commonly known trade practices seem to lie somewhere between the fronts. It may be said that the chief merit of his book, whatever his intentions might have been, consists in showing that it is far too optimistic to think that counteracting the consequences and results of monopolization is merely a juridical problem.

That very often[9] the consumer is left "holding the bag" as a result of the monopolistic tendencies, is obvious. It is, however, very difficult to ascertain in dollars and cents the economic consequences of such practices. How much consumer's money is prevented from being used for better living or housing by being drained into the tills of the dominating manufacturers

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[1] See Monograph No. 19, *Government Purchasing.* An Economic Commentary, by M. A. Copeland, C. C. Linnenberg Jr. and D. M. Barbour.

[2] See Arnold, pp. 26-28 and 173.

[3] See *Final Report*....., pp. 182f.

[4] See *Final Report*....., pp. 169-170.

[5] See Monograph No. 43, *The Motion Picture Industry,* a pattern of control, by D. Bertrand, W. Duane Evans and E. L. Blanchard; and Arnold, p. 168.

[6] See *Final Report*....., p. 300.

[7] Arnold testified about that practice before the TNEC as follows: "They know what is going to happen to them if they don't follow the prices of the largest competitor, and they don't have to go and ask. That was illustrated by the remark of one smaller company executive to me in the privacy of my office. I said, 'Why do you always follow the prices of this larger company? What would happen to you, if you didn't follow them?' He said: 'That, Mr. Arnold, is a question which I hope never to be able to answer from actual experience.' There, of course, is the effect of the large man's coming in the field; the small man is simply terrorized". *(Final Report*....., p. 303)

[8] See also Monograph No. 21, *supra;* No. 34, *Control of Unfair Competitive Practices through Trade Practice Conference Procedure of the Federal Trade Commission,* by the Federal Trade Commission; and No. 36, *Reports of the Federal Trade Commission,* by the Federal Trade Commission.—See further *Hearings*....., *passim,* on specific fields of industry or trade.

[9] Not always, see p. 335.

as an economically "undeserved" profit is not easily ascertainable. It is clear, however, that huge amounts are thus diverted from better use.[1]

As for the burning problems of defense, we have only to refer, as a matter of public knowledge, to the fact that the serious shortage of aluminum which is now hampering the construction of airplanes and which will shortly cause the disappearance of aluminum from the civilian market, is admittedly due to the refusal of the "ALCOA," the foremost example of a hundred per cent monopoly in American industry, to expand its capacity in time to meet the growing demand, and to its—for a long time successful—prevention of potential competitors from erecting competing plants. This attitude is quite easy to understand: the ALCOA management feared that increased plant capacity would not find a wide enough market after the emergency had passed.

Monopolistic interference with actual consumer's interests or public needs is surely established beyond any reasonable doubt. There is no doubt, either, that Arnold has succeeded in exposing the "bottlenecks" that threaten business at large because of the private monopolies' hold on economic life. He has not succeeded, however, in outlining methods whereby monopolies would be checked without encroaching upon the privileges and property-titles of private enterprise as such. The question as to whether such methods are possible and how they could work still remains open to discussion.

The political consequences of the fast growth of monopolistic corporations have been described in many hearings before the TNEC and especially in Simpson's book. With the old fashioned equality of opportunity dwindling, with the market becoming a domain reserved to a few privileged big companies, which like to keep their profits undistributed and to re-invest their own savings without having to seek new investors,[2] we find everywhere dislocation of the small shopkeepers, increase of unemployment and ever-increasing impossibility of absorbing the unemployed into other occupational fields. The trend of eliminating small enterprises is being accentuated—in the United States as well as in Germany or England—by the stress of the present emergency situation. The government departments prefer to deal with a few score "reliable" and technically best equipped big companies instead of with a crowd of small manufacturers who are not as dependable with respect to punctual delivery, etc. With certain raw materials becoming scarce and a system of priorities being introduced, it is inevitable that the big corporations will fare better than the small ones. Not only do they have more "pull," but their continuous operation is much more indispensable than that of the others.

To this economic process there corresponds a political one: an increase of the political influence of the leaders of the big corporations. There have

[1]Arnold has pointed out, for example, that the milk consumers of Chicago, after the indictment of a combination of interested groups, saved about ten million dollars a year (p. 194), and that in Washington, D. C., the ATD prevented a price increase of 2 cents a gallon of gasoline which would have cost the consumers two million dollars a year (p. 48). In most of the cases mentioned by Arnold, however, the overcharges levied upon the consumer cannot be ascertained in figures. He estimates, though, that "investigations of newsprint, potash, nitrogen, and steel, which cost a total of about $200,000, have saved the consumers of this country $170,000,000" (p. 77).

[2]See *Hearings*....., part 9 (1939, *Savings and Investment)*; also Monograph No. 12, *Profits, Productive Activities and New Investments*, by M. Taitel; and No. 37, *Saving, Investment and National Income*, by O. L. Altman.

been some legislative attempts to curtail this influence, such as the several Corrupt Practices Acts and the two Hatch Acts. Their failure has been demonstrated.[1] Of common knowledge also, and substantiated by the investigations of the TNEC, is the growth of the powerful "lobbies," the pressure agencies maintained by the big interests.[2] It has been recognized—and this was one of the reasons for the creation of the TNEC—that the democratic political system faces a real danger by an unchecked increase of the power of monopolistic groups. Can antitrust legislation cast out the anti-democratic spirit of monopoly?

"Antitrust is a symbol of democracy," says Hamilton (p. 97). Yet, the antitrust legislation, "a weapon of policy from another age,"[3] has proved to be very inefficient in checking the growth of monopolistic tendencies. After about forty years of inactivity the Federal Government has finally, under Roosevelt, started a serious attempt to enforce the laws.[4] But besides the lack of sufficient personnel, law enforcement is hampered by structural and procedural defects inherent in any system of penal law: the administration has, e.g., no subpoena power and can therefore only proceed to seize evidence and to hear witnesses under oath by getting a grand-jury to investigate a case with the view of approving an indictment. But grand-juries, mainly composed of respectable business men, are as a rule reluctant to proffer criminal charges against other respectable business men,[5] especially when the criminal liability of the defendants appears to depend upon complicated technicalities of law interpretation.[6]

The testimony before the TNEC and the publications referred to, especially the two excellent monographs of Milton Handler and of Walton

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[1]See O. Kirchheimer, "The Historical and Comparative Background of the Hatch Law" in: *Public Policy*, vol. II, 1941, pp. 341f., esp. p. 360.

[2]See Monograph No. 26, *Economic Power and Political Pressures*, by C. C. Blaisdell, assisted by J. Greverus.

[3]Hamilton-Till, p. 5.

[4]It succeeded in getting the yearly appropriation of the ATD increased from less than $300,000 to about $1,300,000, so that instead of an utterly inadequate staff of only 15 lawyers, at the time the Roosevelt administration came into office, there are now about 200 attorneys (see Hamilton-Till, p 24; also Hamilton, p. 58, and Arnold, p. 276) busy with investigations, indictments and other matters of enforcement. But even that increased number is still very low for an agency which in addition to the antitrust laws proper has to take care of the enforcement of 30 odd laws throughout the whole of American economy, in comparison with the 2,800 employees of the Civil Aeronautics Authority or the 1,200 of the Securities and Exchange Commission (budget appropriation 1940: $5,470,000), which have only one or a few laws each to administer and operate only in a highly specialized field (Arnold, p. 171).

[5]"As often as not they are reluctant to indict persons who belong to their own class and are respectable pillars of society". (Hamilton-Till, p. 52)

[6]"At the moment the law of antitrust stands out in sparse and indistinct lines . . . it will take quite an assortment of beacons to light the twilight zone which separates the legal from the illegal . . ." (Hamilton-Till, p. 102). That, for example, a merger of two corporations, which results in an elimination of competition, may be indictable if the merger was brought about by corporation A buying up the stock of B, but that the perpetrators of the very same crime may go scot-free if A, instead of buying B's stock, bought out its assets, is one of these technicalities which make it understandable that grand-jurors are not likely always to be found willing to go along with the ATD. (See *Hearings*....., part 1, p. 113, and Handler, pp. 46-86; as to the question of what constitutes "elimination" of competition there are very contradictory decisions: consolidations resulting in a 90-95 per cent of output control have been sustained, others covering only 20 per cent have been declared illegal).

Hamilton with Irene Till, as well as Hamilton's very instructive and comprehensive book,[1] have given a complete picture of what one may call the "heroic" struggle of a man with a "little stick"[2] against a well armed giant, namely, an under-staffed public agency charged with the enforcement of old fashioned laws against modern industrial corporations and their trade associations, aided by the most expensive legal talent available.[3] All the enthusiasm and zeal shown by ATD staff members (some of them even paying investigation expenses out of their own pockets)[4] have only succeeded more or less in breaking up some bottlenecks or enforcing a price drop in cases where either the evidence gathered by the Government was of such nature that the defendant companies preferred, immediately after an indictment, to have the case settled without trial, by consent decree, or where the nuisance value of the investigation[5] was such that the corporations feared the ensuing publicity. But in many cases, especially in the most important ones, where the defendants may be reasonably sure that a criminal intention is not likely to be proven, so that all they have to face is the $5,000 maximum fine of the present law,[6] the existing legislation proves indeed very inadequate to prevent or punish violations to any extent commensurate with their frequency.

Can there be a better and more efficient law? The reforms urged by the ATD[7] consist mainly in increasing the appropriations,[8] in giving the Government agencies subpoena power and in "shifting the punitive sanction to a civil base."[9] Arnold has stated clearly that the ATD does not intend to curtail its activities just because of the possible defendant corporations being engaged in national defense work, that, on the contrary, it will "prevent the necessities of national defense from becoming a cloak for schemes which are motivated only by desire for undue private profit. The antitrust laws are the front line of defense against unreasonable use of industrial power" (p. 67).

"Streamlining" and "retooling" of the antitrust laws appears therefore indeed very necessary. Its basic need will be the replacing of the tedious and cumbersome criminal prosecution by administrative control and by a speedy civil procedure.

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[1] See also the material enumerated in note 8, p. 331.

[2] Hamilton-Till, p. 23.

[3] In the Madison Oil case there were no less than 101 defense lawyers who leased an entire hotel during the trial (Arnold, p. 208).

[4] Arnold, p. ix.

[5] "It takes the shock of indictments to clean up a bad situation in the distribution of a product" (Arnold, p. 204). See also Arnold's testimony before the TNEC, *Final Report*....., pp. 98f., especially p. 107: "Indeed, I have come to the conclusion that all that is necesary to bring unjustified prices down is a grand-jury investigation of persons with a guilty conscience".

[6] "The risk of a $5,000 penalty is not guaranteed to kill off a conspiracy that promises to net five millions" (Hamilton-Till, p. 104).

[7] See *Final Report*....., pp. 261-271.

[8] The ATD is already, so to speak, on a "pay-as-you-go" basis. Although it is not meant to be a revenue producing agency, it collected about $2,400,000 in fines in the first half of the fiscal year 1940, or about twice as much as its expenditures for the whole year (Arnold, p. 212). An increase in expenditures, even without increasing the size of fines, would doubtless be rewarded with a much higher increase in fine collections.

[9] Hamilton-Till, p. 104; see also the "O'Mahoney bill". S. 2719, 76th Congress, 1st Sess. (1939), reprinted in *Final Report*....., p. 259.

The TNEC has recommended a revision of the patent laws, has adopted the ATD's recommendations for the reform of the antitrust legislation and has added some recommendations of its own, such as the Federal charter for corporations.[1] It is unlikely that all its recommendations will ever become law.[2] But assuming this would come to pass, would or could it result in an effective check on the growth of monopoly and monopolistic trade practices?

Provided that Congress would increase ten-fold the appropriation of the ATD, the "streamlining" of the laws and a complete overhauling of the organization of the ATD[3] might possibly prevent most of the flagrant abuses of economic power which today must remain unhampered because of the lack of enforcing personnel and the inadequateness of the "horse and buggy" law itself. But it is not abuses that matter!

Even the best law—a real weapon instead of a nuisance—and the best law-enforcing agency could only prevent the growth of monopolistic practices by "artificial" means. They could give more protection to the consumer than he has now. However, they could not alter the situation as far as voluntary acceptance of price leadership is concerned, nor could they prevent all other market curtailments which result from the fact that modern technology and the ensuing huge investments have caused a condition where a few corporations by their very existence and economic power can, very widely and without any conspiracy, suspend the law of demand and supply for their particular markets.[4] There can be no law to prevent this.[5] "The industry strides ahead, little embarrassed by fetters too out of date to bind. The use of litigation to give effect to economic policy is not the happiest of human inventions" (Hamilton, p. 82).

The position of monopolies in modern society is ambivalent. It is doubtful whether monopolies economically are bad *per se*. Without the enormous technological development resulting from and causing the prevailing monopolistic tendency, mass production would hardly have been possible. Monopolies as the ultimate consequence of concentration are unavoidably linked to modern industrialism. What they are and what they stand for is not a mere abuse to be ruled out by legislation.

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[1] *Final Report*....., pp. 20f.

[2] After all, Congress, by permitting vertical price fixing as an exception to the prohibition of price fixing under the antitrust laws (Miller-Tydings Act of 1936; see the interesting discussion between Edwards and Tydings, *Final Report*....., pp. 142-164) has not shown itself to be keenly in favor of a tightening of the antitrust laws and ". . . there are great pressures to keep down appropriations for actual antitrust enforcement and to solve our conscience by research and reports on prices which emit feeble roars like a toothless lion" (Arnold, p. 295).

[3] Giving it for instance a staff of specially trained investigators instead of having it depend upon the assignment of personnel by the Federal Bureau of Investigation, who, trained as they are to detect murderers and spies, may not be the best available sleuths to unravel complicated trade practices.

[4] See Monograph No. 21, *supra*, pp. 314-315.

[5] See the discussion between Arnold and O'Connell *(Final Report*....., pp. 107-108): Arnold: "We restored competitive conditions insofar as is possible with [only] four companies operating in the [potash] field . . ." O'Connell: "I know and you know what the price structure in potash industry is. . . . It doesn't seem to me that there is an industry where there is effective price competition. . . . I was trying to see whether or not there were not areas in which the antitrust laws will not be effective due to competitive conditions." Arnold: "Unquestionably."

The main problem centers, thus, on the question whether industrial monopoly as such can be abolished.[1] As President Roosevelt stated in his message of April 29, 1938, recommending the setting up of the TNEC: "The power of a few to manage the economic life of the nation must be diffused among the many or be transferred to the public and its democratically responsible government. If prices are to be managed and administered, if the nation's business is to be allocated by a plan and not by competition, that power should not be vested in any private group . . ." *(U. S. Senate, 75th Congress, 3d Sess., Document No. 173.)*

Inasmuch as the recommendations of the TNEC are aimed at "diffusing among the many" the power to manage the economic life of the nation, they will prove insufficient, because laws cannot stop an irreversible social trend. This is what the testimony before the TNEC actually proves. This is what the additional data presented and discussed in the TNEC monographs and in the publications under review are supporting. This is what overshadows all theses and arguments aiming at improvement of the antitrust legislation.

FELIX WEIL (New York).

Dimock, Marshall E., and **Howard K. Hyde,** *Bureaucracy and Trusteeship in Large Corporations.* Monograph No. 11, printed for the use of the Temporary National Economic Committee. U. S. Government Printing Office. Washington, D. C. 1940. (144 pp.; $0.30)

Brecht, Arnold, and **Comstock Glaser,** *The Art and Technique of Administration in German Ministries.* Harvard University Press. Cambridge 1940. (xiv and 191 pp.; $2.00)

Marx, Fritz Morstein, "Bureaucracy and Dictatorship" in: *The Review of Politics,* Vol. 3, No. 1, January 1941, pp. 100-117.

R., Bruno, *La Bureaucratisation du Monde.* Paris 1939. (350 pp.)

Burnham, James, *The Managerial Revolution.* What is happening in the World. John Day. New York 1941. (296 pp.; $2.50)

It is generally conceded that the numerical increase of public and private bureaucracies has of necessity been accompanied by a manifest growth in bureaucratic power and influence. The books under review deal with two aspects of the problem that has resulted from these developments, first, its more technical and administrative aspect, and second, the social process that leads to bureaucratization.

The first aspect of the problem is the one treated in Marshall E. Dimock and Howard K. Hyde's very thorough and intelligent study of the causes and possible correctives of industrial bureaucracy. Having found that bureaucracy—characterized by "distribution of functions, hierarchy, and

[1] See Monograph No. 25, *Recovery Plans.*