contracts, securities regulations, and salary stabilization. Also discussed briefly are the effects of judicial intervention on the complaint of minority stockholders. Of major interest to many will be the 136 page appendix of actual employment and compensation agreements.

The volume serves as a useful guidepost to the factors which must be considered in determining the type, amount and manner of paying executive compensation. It does not purport to present a comprehensive and detailed analysis of all the statutes, administrative rulings and judicial determinations. The sections on judicial controls are limited to discussions of general principles to be derived from the cases, and analysis of a few of the familiar decisions such as the *Bethlehem Steel*[1] and *American Tobacco*[2] cases. The discussions of salary stabilization and federal securities legislation are, for the most part, brief statements of the basic objectives, the overall limitations and the possible exceptions contained in the law. The authors have provided references to the applicable authorities, so the reader who desires to explore a particular question is directed to the necessary source material.

Primary emphasis falls on the tax aspects of the various compensation agreements. In this difficult, and in many respects still uncharted, territory the authors present a detailed discussion of the key rulings and decisions dealing with the tax effects to the corporation and the executive resulting from particular forms of compensation. Here the discussion is not limited to those situations having received direct attention from the authorities, but the possible application of known rules of taxation to other and as yet untested compensation plans is pointed out.

The book should serve as a useful aid to the corporation, the executive, and to counsel.

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Monopoly and Free Enterprise. By George W. Stocking and Myron W. Watkins. N.Y.: Twentieth Century Fund, 1951. Pp. 596. $4.00.

The Twentieth Century Fund's comprehensive study of international and domestic monopoly was completed with the publication of *Monopoly and Free Enterprise*. Focussed directly on the American economy, this final volume of the trilogy is concerned with the relation of business organization to the structure and behavior of markets. The first volume, *Cartels in Action*, describes and analyzes the growth of international cartel arrangements in a broad cross section of world economy; the second, *Cartels or Competition?*, estimates the extent to

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1 Berendt v. Bethlehem Steel Corp., 108 N.J. Eq. 148, 154 Atl. 321 (1931).

2 Heller v. Boylan, 29 N.Y.S. 2d 653, aff'd, 263 App. Div. 815, 32 N.Y.S. 2d 131 (1941).

which cartels affect the foreign trade and domestic markets of the United States and analyzes the methods and economic effects of cartelization.[1]

The industries surveyed include agricultural products (sugar and rubber), raw materials (nitrates and rubber), intermediate goods (iron and steel, aluminum, magnesium, and chemicals), and finished products (electric lamps). They were selected "to show the wide range of economic activities subjected to cartel controls, the diversity of circumstances out of which cartels have grown, and the differences among cartels in objectives, structure, methods, power, and results."[2] Their case histories cover periods which range from over half a century in nitrates to less than two decades in sugar and magnesium.

This analysis, to quote from the report of the Committee on Cartels and Monopoly appointed by the Twentieth Century Fund, seems to add up to the following indictment: "Cartels restrain trade and production, raise prices, and deter investment; they foster the misallocation of resources, protecting uneconomic producers against competition. In short, cartels detract from the world's ability to create wealth, and impede the most desirable distribution of the wealth that is created. They substitute the conclave of private businessmen or government diplomats for the open market place as the source of decisions as to what shall be produced and where, on what terms and where it shall be sold."[3]

The extent to which cartels pervade the American economy is suggested by computations for three major classes of products in 1939. These indicate that approximately 87 per cent by value of the mineral products, 60 per cent of the agricultural products, and 42 per cent of the manufactured products were cartelized.[4]

The extent of industrial concentration prior to World War II is suggested by the following: "In each of seven industries one corporation controlled the entire domestic output; in five others one company accounted for from 60 to 95 per cent; in twelve others two companies accounted for from 62 to 100 per cent. Industries in which four producers or less accounted for from 75 to 100 per cent of the total value product produced one third of the value of all manufactured products. Industries in which four producers or less turned out more than half the total value product accounted for 57 per cent" (p. 494). Pressures toward both concentration and deconcentration during World War II are not believed to have altered the prewar pattern significantly (p. 497). Of the four major factors promoting concentration, the financial and strategic are deemed more immediately decisive than the commercial and technical. It is recognized, however, that "[m]odern technology decrees an organization in some industries so

[1] "A cartel is an arrangement among, or on behalf of, producers engaged in the same line of business, with the design or effect of . . . eliminating competition among them." Stocking and Watkins, Cartels or Competition? 3 (1948).

[2] Stocking and Watkins, Cartels in Action 6 (1946).

[3] Op. cit. supra note 1, at 408–409.

[4] Ibid., at 492, Table G, Appendix B.

large that a few sellers may supply the market (regional or national) at a lower average cost than many sellers each operating on a smaller scale" (p. 497).

Industrial concentration and bigness give rise to demands for administrative regulation which are thought to menace the very existence of private enterprise. The Committee on Cartels and Monopoly[5] suggests meeting this menace with an amendment to the Sherman Act establishing a rebuttable presumption that concentration exceeding a specified percentage of the market is prejudicial to the public interest.[6] Otherwise, the antitrust laws, properly enforced, are regarded as a deterrent to "serious monopoly abuses," especially with increased penalties for violation.

The Committee on Cartels and Monopoly recommends that the various antitrust laws be strengthened through elimination of exemptions favoring particular groups. The competitive system, it suggests, would be strengthened by coercive legislation to eliminate inconsistencies between the antitrust laws and laws relating to agriculture, corporations, export trade, labor, natural resources, patents, tariffs, transportation, as well as various state and local licensing laws. Committee recommendations for removing obstacles to competition include (pp. 561-62):

1. Repeal of the Webb-Pomerene Act, which relaxes the antitrust laws for export trade associations.
2. Repeal of the Miller-Tydings Amendment to the Sherman Act and the so-called state fair-trade laws which discourage price competition among retailers in the sale of branded merchandise.
3. Amendment of the Robinson-Patman Act to eliminate those provisions that violate the general principle that price differences should not be out of line with cost differences.
4 Amendment of the Sherman Act to restrict labor immunity to the markets in which it sells its services.
5. Revision of agricultural marketing agreement legislation to provide for effective consumer representation and prevent abuse by producers, processors and distributors of agricultural commodities.

The authors have applied the techniques of economic analysis to the facts of business life drawn from a variety of sources, including several hundred antitrust cases and hearings and reports of administrative agencies and congres-

[5] The Committee consisted of James M. Landis, formerly Chairman, Civil Aeronautics Board, Dean, Harvard Law School, and Chairman, Securities & Exchange Commission; A. S. Goss, Master, The National Grange (died Oct. 25, 1950); Marion Hedges, Special Asst. to the Labor Advisers, ECA, formerly Director of Research, International Brotherhood of Electrical Workers; Donald M. Nelson, Chairman Electronized Chemicals Corp., formerly Chairman, War Production Board; Frank M. Surface, Consultant to Management and formerly Executive Asst. to the President, Standard Oil Co. (N.J.); Jacob Viner, Professor of Economics, Princeton University; and J. Raymond Walsh, Director at Large, National Bureau of Economic Research, formerly Director of Research and Education, Congress of Industrial Organization.

[6] Mr. Surface dissenting from this recommendation argued "performance in the public interest is in itself an adequate test."

sional committees. The analysis shows that further concentration of economic power is neither desirable nor inevitable, and that competition can be more effective. A number of industries were found to be highly competitive "except as the state intervened to prevent competition, or collusive agreements temporarily stifled it." The competitive market situation in agriculture, construction, lumber, bituminous coal, crude-oil production, fisheries, retail distribution and the service trades contrasts markedly with the situation in markets for manufactured and mineral products where domination by a few large sellers is commonplace. The purpose and effects of monopoly may result from the rational behavior of a few such large sellers as well as from the activities of a single seller or the collusive activities of many. Collusion and predatory trade practices, although important elements of the offense in most antitrust cases, are not essential to antimonopoly action under Section 2 which condemns monopolizing "regardless of whether more than one company shares in the market control, and regardless of whether the power acquired is used to oppress consumers or exclude would-be competitors" (p. 289). The decision in the *Alcoa* case,[7] by resurrecting Section 2 of the Sherman Act from judicial oblivion has prepared the way for reconsideration of the economic and legal significance of bigness per se.

Judicial interest in market results may foreshadow the adoption of an economic concept of monopoly. In the *Interstate Circuit*[8] and second *American Tobacco*[9] cases conspiracy was inferred from a common course of action among a few large sellers. The market strategy of each is necessarily influenced by the anticipated reaction of the other and the result, "Conscious Parallelism," is the same as in the case of collusion. If rational oligopoly behavior is defined as "Conscious Parallelism" and equated to illegal conspiracy, in the absence of formula pricing or other persuasive evidence of collusion, the courts, by means of semantic exercise, have restored the original meaning of the Sherman Act.

The concluding volume begins with a discussion of the significance of economic organization and proceeds to survey the structural changes in the American economy for a century or so. The basic factors in industrial concentration are described and followed by chapters on oligopoly in theory and practice, price leadership and basing point pricing. The next five chapters consider the effect on competition of trade associations, antitrust policy, trade practices, trade practice regulation, and governmental policies. These are followed by a chapter on incorporation policy and industrial concentration, and one on patents and monopoly. The concluding chapter stresses the need for halting the concentration of economic power, whether in governmental or private hands "or the competitive economy will be gone beyond recall." This might be accomplished, it is said, by limiting the use of the holding company, raising the standards of responsibility for corporate directors and executives, and a general tightening of

[7] United States v. Aluminum Co. of America, 148 Fed. 2d 416 (C.A. 2d, 1945).

[8] Interstate Circuit, Inc. v. United States, 306 U.S. 208 (1939).

[9] American Tobacco Co. v. United States, 328 U.S. 781 (1946).

incorporation laws, encouraging commodity standardization as a means of curbing fictitious product differentiation, compulsory labelling or grading, compulsory licensing of patents, and publicly sponsored technical research.

As collateral reading along with the cases in the field of trade regulation, this study has no equal. In addition to whatever merit the authors' public policy recommendations may have, the Twentieth Century Fund has performed a worth-while public service in making this study available. There has long been a need for an analysis of the implications of industrial concentration, size and inter- and intra-industry cooperation as manifested in various antitrust cases involving cartels, patent-pooling and other trade practices. By skillfully coordinating the relevant economic and legal theories, the authors have most successfully contributed to the clarification of these questions.

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