

BOOK REVIEWS

The Politics of Industry. By Walton Hamilton. New York: Knopf, 1957; Pp. 169. \$3.50.

*The Politics of Industry*¹ is one of the many thoughtful books of the last few years which analyze and appraise the effects of the giant corporation and the self-government of industry upon modern business and political institutions and upon the economic freedom of the individual.²

The author elaborates upon the meaning he gives the words in the title to make clear the intended thrust of the material in the book.

For want of any name that is better, I have given to this book the title *The Politics of Industry*. The verbal symbols "politics" and "industry" have no fixed contours, and when linked together the resulting phrase escapes its moorings and leads—and lures—into the unknown. The politics here invoked is not that of common speech—the wrangle for votes and the televised soapbox; rather the word is used in the Aristotelian sense as an over-all term for the usages and traditions, for the arrangements and policies through which men are governed and through which men—usurping the function of the gods—attempt to shape destiny. Industry, too, has broken away from the solid ground it occupied in *Poor Richard's Almanac*, and no longer connotes the outpouring of human labor. It is used here as a synonym, which is not a synonym, for the national economy. It means, in the jargon of the learned academies, the concatenation of interrelated activities which turn out the stream of goods and services out of which men and women, as best they can, fashion their standards of life.³

More simply stated, the politics of industry are the many forces that make business and the economy "tick" today.

The author makes the thesis of the book equally explicit.

The thesis here is that the market which of old was sovereign to the whole economy has been deposed, and that the mandate of supply and demand which rigidly it enforced has ceased to be an "iron law." It is not that the market is no longer of importance, or that it is a matter of indifference as to how much or how little of a com-

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Mr. Hamilton served as a member of the National Industrial Recovery Board and as a special assistant to the Attorney General of the United States from 1938 to 1945. His earlier books include *The Control of Wages* (1923), *The Case of Bituminous Coal* (1925), *The Pattern of Competition* (1940), and *Patents and Free Enterprise* (1943).

² See, e.g., Lilienthal, *Big Business: A New Era* (1953); Berle, *The 20th Century Capitalist Revolution* (1954). See also Slichter, *A Defense of Bigness in Business* (N.Y. Times Magazine, August 4, 1957, p. 10). These studies all had their genesis in Berle and Means, *The Modern Corporation and Private Property* (1932).

³ P. 6.

modity is offered for sale. It is rather that the throne has had to be shared, or that in areas of the economy the market has ceased to be overlord; and that the stream of judgments by which the vast network of productive activities is kept going no longer emerges from the automatic play of economic forces. A host of procedures and arrangements—political in character—have invaded the domain of business. As a result there has arisen, quite apart from the ordinary operations of state, a government of industry which in its own distinctive way has its constitution and its statutes, its administrative and judicial processes, and its own manner of dealing with those who do not abide by the law of industry.⁴

It is apparent today that a free and open competitive economy based upon the law of supply and demand has, like the doctrine of *laissez-faire*, long since passed into an era to which there is no return. Moreover, against the now complex, well-integrated, and efficient self-government of industry, a political government, its regulatory agencies and its courts, are out-manned and generally ill-equipped for the job of regulation in the public interest.

Today, the various industries are highly organized by means of the trade association and the federation. These may not expressly direct the action of the members; their function lies "in the creation of attitudes, in the dissemination of sound opinion, and in the promotion of practices" within the industry, with almost the same result, but not the same legal consequences.⁵

In its present form of development, the private government of industry is both international and supra-national. It is international in external form and organization. It is supra-national in its ability to leap over political boundaries, to challenge national authority through cartels, to traffic in the technology of industry through the letter patent and patent license, and even to frustrate national policy for the easier movement of goods. It was not the result of some master plan; rather, it grew out of expedient responses to individual political and economic stimuli. As the author points out, there was underlying it, of course, "the impulse [of business] to get together . . . for as an unleashed force competition is hazardous."⁶ Mainly, however, industry self-government today is the heritage of enforced regimentation originally imposed upon it during periods of national economic stress and of war.

The phenomenon of regimented industry in this country arose during the First World War when industry was "drafted" into the national war service under the old War Industries Board. Prior to this time, it had, as a general rule, followed private paths to separate goals. Industry self-government received its greatest boost under the National Recovery Administration of the early thirties, which ordered the conversion of American industry into monopolies in the interest of social and economic stability. For the first time in our history an attempt was made on a nationwide basis "to establish a political economy com-

⁴ Pp. 6-7.

⁵ P. 9.

⁶ P. 8.

posed of a host of organized industries, each with its code of law, its governing authority, and its system of police."⁷ As the author indicates, the demise of the NRA may have ended its formal existence, but "in many cases the ties formed in Washington were continued back home"⁸ and many industries "were now able quite on their own . . . to formulate their own codes and to impose the law of the industry upon their members."⁹ At the end of the Second World War, the movement toward an economy of sheltered or even controlled industries, at least as we know it today, was an accomplished fact.

These events paralleled the proliferation of administrative power which reached its peacetime peak under the New Deal in the early and middle thirties. If the organization of industry did not spell the end of free and open enterprise and competition, the rise of the federal regulatory agency did. Apart from the national regulation of industry in emergencies, the delegation of authority to individual agencies during these years whittled away at what had been completely private areas of control.

The inability of the courts and the administrative agencies to regulate the activities of industry during these years is one of the great political disappointments and ultimately, perhaps, one of the tragedies of the period. This failure does not rest on a lack of statutory weapons. As modern business expanded, our basic economic philosophy of equalizing competitive opportunity found expression in the Clayton Act,¹⁰ Robinson-Patman Act,¹¹ Webb-Pomerene Act,¹² and the Federal Trade Commission Act.¹³ However, as the author indicates, the judicial process was only "intended to do justice in the instant case. . . . It was never shaped for so stupendous and alien a task as causing the channels of commerce to run straight, or fitting an industry out with a new and different set of practices."¹⁴ The administrative agency on the other hand cannot in good conscience make such a plea. Agencies were formed in great numbers for these very purposes in the early days of the New Deal. During that period administrators of almost uniformly high quality brought vigor and imagination to the successful accomplishment of the statutory objectives.

The development of the crusading agency during the New Deal obviously posed a serious obstacle to the ability of industry to function unfettered under a laissez-faire philosophy. After a number of unsuccessful preliminary skirmishes in the courts, which failed at quick elimination of the administrative agency,

⁷ Pp. 8-9.

⁸ P. 97.

⁹ *Ibid.*

¹⁰ 38 Stat. 730 (1914), 15 U.S.C.A. § 12 (1951).

¹¹ 49 Stat. 1526 (1936), 15 U.S.C.A. § 13 (1951).

¹² 40 Stat. 516 (1918), 15 U.S.C.A. § 61 (1951).

¹³ 38 Stat. 717 (1914), 15 U.S.C.A. § 41 (1951).

¹⁴ P. 143.

industry turned to the longer term view: "If you can't lick them, join them." It thereupon acted "to use to the full all the resources at hand to take the agencies of control into captivity—and to conscript them into the service of the very interests they were set up to supervise."¹⁵ Mr. Hamilton concludes that the capture has been made and this seems so. Added to this, other factors have caused a general decline in the efficacy of the administrative agency: lack of initiative and imagination, low caliber leadership, failure to assert and maintain dominion over critical areas, and so on. The overriding paradox of the last twenty years has been the gradual conversion of agency control into agency sanctions which grant the industries "regulated" an immunity from the mandates of the law.

Regardless of its faults, it is difficult to picture an economy and a government as refined as ours without the administrative agency. Most of these faults can be corrected to a large extent by appointment of a few administrators at the highest level in each agency with some of the vigor, quality, and particularly courage of their predecessors and, to a smaller extent, by a more reasonable measure of post-delegation control by congressional committees.

Mr. Hamilton devotes practically the entire book to surveying the problems following the emergence of the big corporation and the regimentation of industry. A few pages of brief, generalized (and sometimes perfunctory) guides for future action are included at the end of the volume. (1) *Competition*. "The economy of today calls for its degree of regimentation. . . . [Yet, as] large an area of the industrial system as possible should be left to the competitive regime."¹⁶ (2) *Mergers*. "Mergers ought not to be allowed where technology does not lead and where the hazard of the concentration of economic power forbids."¹⁷ (3) *Patents*. "After the limited time the invention should be promptly restored to the public domain. There is need for a policy . . . which will prevent their use as sanctions for what the laws forbid."¹⁸ (4) *Military purchases*. "In recent years the Pentagon has probably done more to promote the concentration of economic wealth and power than can be undone by the vigilant campaigns of a half dozen Antitrust Divisions. Here is a working at cross-purposes which vividly attests the current backwardness of the political arts."¹⁹ (5) *Administrative agencies*. Agencies need strengthening and reviving at all points. "The administrative agency presents problems not easily resolved. Its shortcomings inhere in the dualism between immediate business action and a belated public review. Until political invention contrives an adequate substitute, it will continue to harass and to confuse."²⁰

To aid in evaluating this book, let us briefly compare Hamilton's treatment of one critical problem area with that of other writers in this field. It is vital

¹⁵ P. 52.

¹⁶ P. 167.

¹⁷ Pp. 167-68.

¹⁸ P. 168.

¹⁹ P. 152.

²⁰ P. 168.

that the tremendous power of the corporation be matched by a sense of social responsibility by the corporation. Mr. Hamilton rejects corporate conscience as a means by which "corporate responsibility is frankly recognized and positively discharged"²¹ on the grounds of corporate and management self-interest and the limited experience of management in comprehending the dual role which it would be called to play. Salvation does not lie, he states, with the "corporate official who declares that what is good for his company is good for the country."²²

In *The 20th Century Capitalist Revolution*²³ Adolph A. Berle, Jr., sees a brighter trend in an increasingly enlightened industry. He acknowledges danger in the growth of the giant corporation and the lack of safeguards of the public interest. Nonetheless, he asserts that the major evolution characteristic of the corporation in this century has been its development from a profit-seeking enterprise only into a quasi-public body with a sense of social conscience and responsibility.

The view that what is good for Big Business is good for the country *can* be had if we move from the more moderate ground of Berle to that of David Lilienthal. In his book *Big Business: A New Era*,²⁴ "corporate conscience" is not a solution to offsetting corporate power, because, simply enough, corporate power is no danger in the first place. In fact, the problem is the failure to give Big Business a large and free enough arena within which to operate.

That Big Business has performed economic wonders with one hand tied behind its back by our suspicions and fears does not mean that these handicaps do not exist. It only foreshadows what it could do working with both hands, in an affirmative atmosphere, one that recognizes its capabilities and achievements.²⁵

[I]n Bigness we have the material foundation, of a society which can further the highest values known to men, values we describe as "spiritual."²⁶

And so on. Apparently, the panacea is to substitute "Big Business" for "Big Brother"²⁷

The point of this comparison is not that other writers think differently from Mr. Hamilton, but that here, and elsewhere in his book, Mr. Hamilton deals in solid blacks where the true picture *may* not be so all of a piece.

²¹ P. 138.

²² P. 141.

²³ Note 2, supra.

²⁴ Note 2, supra.

²⁵ Lilienthal, *op. cit.* supra note 2, at pp. 7-8.

²⁶ Lilienthal, *op. cit.* supra note 2, at p. 190.

²⁷ In another area Mr. Hamilton concludes: "Mergers ought not to be allowed where technology does not lead . . ." (Pp. 167-68). Sumner Slichter, an equally eminent writer, concludes otherwise: "The many advantages produced by mergers show that the proposal that mergers be prohibited unless they can be justified by technological reasons does not make sense. There are good reasons for mergers that have nothing to do with technology." Slichter, *op. cit.* supra note 2, at 43.

This book was based in large part upon a series of lectures.²⁸ A thumbnail critique would be that it has all the advantages and disadvantages of complex material given in the lecture form. Problem areas are outlined and illustrations sketched in "impressionistic terms."²⁹ This technique perhaps explains an occasional argumentative tone in the book.³⁰

Unfortunately, the book suffers from paragraphs of soaring generality and from digressions into analogies so long and developed as to become separate, and often unrelated, vignettes within the body of the work. Though the ultimate direction is clear, it often seems that "you can't get there from here," or, if you do, you may be too exhausted to enjoy it when you do.

Despite its limitations, this book is worth reading. The organization is remarkably clear. The outline is easy to follow. Concrete examples by way of illustration and clarification are plentiful. Mr. Hamilton brings to his subject vast learning and experience. His opinions deservedly carry weight. The common reader will gain an insight into the impact of the giant corporation and the self-government of industry upon the economy and its penetration into almost all phases of contemporary life.

If the title had followed content more closely, the book might better have been called "Politics in Industry—The Problem Posed." Perhaps, Mr. Hamilton will soon bring his attention to bear at greater length upon solutions to the problems he has analyzed in this book.

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²⁸ William W. Cook Foundation Lectures of the University of Michigan.

²⁹ P. 62.

³⁰ In reviewing this book, Senator Paul H. Douglas said of the author's style: "No one has been as successful as he in making plain, matter-of-fact economic situations mysterious, complex, and obscure. A master of stylistic bravura and chiaroscuro, his hand has grown even more skillful with age. . . . The style leaves an impression . . . that one has been fed a heavy diet of clotted cream." *Saturday Review*, June 29, 1957, at p. 17.

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Federal Estate and Gift Taxes. By Charles L. B. Lowndes and Robert Kramer. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1956. Pp. xxii, 1028. \$25.00.

Fifteen years have passed since Randolph Paul's treatise on Federal Estate and Gift Taxation¹ was published, and eleven years since it was supplemented. It is unhappily symptomatic of the uneasy life of the tax practitioner that he can make use of that work only for the occasional problem that requires historical research. The 1954 Code has had one wholesome result, at least, in germinating a new general work on the subject.

This is a very good book. The most immediately outstanding thing about it is the manner in which it is written. The authors (both Professors of Law at

Paul, *Federal Estate and Gift Taxation* (1942) (Supp., 1946).