

BOOK REVIEWS

FAIR COMPETITION: The Law and Economics of Antitrust Policy. By Joel B. Dirlam and Alfred E. Kahn. Ithaca: Cornell University Press, 1954. Pp. xi, 307. \$4.50.

It seems to be fashionable these days to criticize our antitrust policies and it is therefore refreshing to find that there are still some students of the problem who do not find it necessary, after analysis, to condemn. Within the compass of 307 pages, the authors have attempted a dispassionate re-examination of "the areas of antitrust policy that have been most responsible for, and are most vulnerable to, the current dissatisfaction" (p. 3). In large measure, they have succeeded.

The analyst is met at the threshold with an interesting and provocative question based on the premise that our economy has, on the whole, been behaving quite well. Does that mean that there is no real need for vigorous enforcement of the antitrust laws or does it mean that this state of relative balance is directly attributable to the successful enforcement of these laws? What, indeed, is our antitrust policy? The old Sherman Act of 1890 and its judicial proliferations over the last forty years can be readily interpreted in the white light of pragmatic experience. But how about "the new Sherman Act" as it has developed over the last 15 years, more particularly as reflected in the decisions after 1945? Do we now have an "excessively doctrinaire, legalistic, economically naive" (p. 10) interpretation and is it necessary or does it cry out for reconsideration "in the light of new conceptions of workable competition" (p. 10)? These are the questions Professors Dirlam and Kahn have set themselves to answer. They accept the fact that the traditional "rule of reason" has been rather thoroughly diluted and they conclude that we must "investigate the net effects of business structures and actions on over-all economic performance, measured in terms either of concrete economic results or of the continuing vitality of competitive forces in the market as a whole. . . . The crucial test of virtue is industry performance. Does it give the people 'what they want'?" (p. 13).

The utopian concept of a healthy market is well described as "one of balance: sellers sufficiently few for efficiency and progress, yet numerous enough to give the buyer real alternatives and to prevent monopolistic exploitation and restrictionism; buyers big enough to offset the power of sellers yet not so powerful as to exploit them or the public; control over supplies and markets, whether by contractual arrangements or financial relationships, to permit desirable long-term investments and the risking of savings, yet not such dominance as excessively to restrict the competitive opportunities of new entrants; sufficient limitation of rivalry between competitors to avoid cutthroat competition, yet not so much as to produce excessive monopoly power" (pp. 13-14).

Is our antitrust policy shaped to achieve that ideal? Our antitrust laws are, of course, confused by the 19th century concepts on which they were premised, but as revitalized by recent judicial pronouncements, can they be effective in insuring "the kind of a balance necessary for workable competition under conditions of modern technology" (p. 14)?

This is the crucial question and the authors get right at it; they assess the recent criticism directed at our antitrust concepts primarily in its own terms, *i.e.*, by investigating the economic consequence of the "new Sherman Act." They do not, however, make the mistake of concluding that the problem is purely an economic one. Too many critics have reduced the problem to that overly simplistic approach. We are not dedicated to a competitive system for "economic" reasons only. As the authors recognize, antitrust policy cannot be dissociated from such "social and political ideals as the diffusion of private power and maximum opportunities for individual self-expression" (p. 17).

The feasibility of adopting the economic standards for antitrust proposed by the new critics is thoroughly appraised and the authors contrast these standards with the traditional legal criteria of monopoly and unreasonable restraint. They trace the path of the law during the last decade and point out to what extent that development departs from the traditional legal criteria and saps the traditional rule of reason. They also offer an economic evaluation of recent antitrust cases in each of the areas where current criticism argues that the law has gone astray.

The major part of the book is devoted to a well-conceived and excellently written analysis of the leading cases of the last ten years, most of which present "the problem of reconciling interests of consumers with those of producers, or of conflicting groups of producers, under circumstances where it would be absurd to say that one interest clearly and absolutely outweighs the other" (p. 21).

This excursion through the cases is not without its reward. Based upon it, with the advantages of hindsight, we are led to realize recent antitrust policy is by no means as novel as some critics would have us believe it is; on the contrary, with relatively few aberrations, the cases seem to fit comfortably into the policy framework within which the acts have been enforced since their inception. "The traditional presumption against collusive and exclusive tactics and systematic discrimination remains at the core of the law, and this is as it should be" (p. 260).

The authors properly conclude that it would be foolhardy to tamper with the doctrine that price fixing, exclusive tactics, or mammoth mergers are illegal; that an extension of the rule of reason recommends itself and that Section 7 of the Clayton Act should be enforced as energetically as market structure allows. They conclude with a well-taken criticism of Professor S. C. Oppenheim's proposals in 50 *Michigan Law Review* 1139 (1952).

Although this study contains a collation of antitrust decisions, it is not just a reference book. In lucid style and with constructive criticism,

the authors chart the development of the law, and all those who are groping for a solution and for a law that would establish and maintain a workable competition will find their contribution both stimulating and provocative.

Rudolf Callmann †

THE GOLDEN DOOR (The Irony of Our Immigration Policy).

By J. Campbell Bruce. New York: Random House, 1954.
Pp. 244. \$3.75.

The Immigration and Nationality Act of 1952, known as the McCarran-Walter Act, codified our exclusion, deportation, and citizenship laws. This codification retained many old injustices, added many new restrictions, and included some few liberalizing provisions such as the grant of a small quota to the Japanese. The injustices and arbitrary restrictions of the McCarran-Walter Act, "the tyranny that is implicit in our present immigration law and explicit in its administration" (p. 3), is the dramatic, moving, and often tragic subject of *The Golden Door*, by John Campbell Bruce, a California newspaper man.

The unfairness of permitting aliens to risk their lives in our armed forces only to reward them with subsequent deportation, the inhumanity of long and senseless detention of the foreign-born, the ridiculous and pustulant questioning of visitors to our shores, the indefensible use of the unreliable, secret and malevolent informer in immigration cases, the discriminatory and hostile treatment of Americans of Chinese blood, and the unthinkable and despotic life-and-death powers vested in consuls and immigration officials are reviewed and documented with illustrative examples.

So impressed is Mr. Bruce with the all too many cases of immigration brutality that he feels compelled to say: "The Immigration Service substitutes its own theory of justice: A man accused is guilty, and the burden is upon him to prove his innocence" (p. 82). Former Congressman Maury Maverick commented:

"Our Immigration Service is the greatest bureaucracy on earth. Stricken by the McCarthy terror of Communism, it looks upon all aliens as wicked people and constantly fights them. Unfortunately, the result appears like the same disregard for human rights that the Soviets practice. Unfortunately, above all, the Congress has written a law which gives immigration officers little chance to show any mercy" (instant book at p. 219).

The tragic experiences of the individuals involved in *The Golden Door* fully justify such comments. However, in fairness to the Immigration Service, with whom this reviewer has often disagreed, it should be said that many are the occasions when a helping and sympathetic hand has been

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lent to aliens and their counsel. I do, however, agree with John Campbell Bruce that too many instances of injustice stain the history of our Immigration Service and that due process is now long overdue in the hearing procedures which govern our immigration and citizenship laws.

There is also no denying that *The Golden Door* accurately reflects the chaos, brutality, and loss of prestige abroad which have been fostered by the present immigration laws. The mass of obscurities in the Act is not conducive to efficient, orderly administration. Its retroactive features do not bespeak fairness to our fellow human beings. That they are foreign-born rather than natives of our shores does not excuse such *ex post facto* treatment. Mr. Bruce properly notes the inconsistency of proclamations of brotherhood of man by the United States in one breath and a flat denial of such doctrines in our racially discriminatory quota laws. The arbitrary denial of visas and the unnecessary grilling and humiliation of applicants for admission to our shores not only prevent the progress and enrichment which could come to the United States through barred scientists, educators, and normal immigrant or tourist traffic, but impair "our relations with the rest of the democratic world in the lineup against totalitarianism" (p. 154). The message of *The Golden Door*, a plea for a democratic law and its humane administration, is one interestingly reported, accurately documented, and well worth reading. Lawyers and laymen will find this book invaluable for a fuller understanding of the objectionable features of the McCarran-Walter Act and the misdirected execution of its provisions.

Jack Wasserman †

RENEWING OUR CITIES. By Miles Colean. New York: The Twentieth Century Fund, 1953. Pp. x, 181. \$2.50.

Urban renewal is the process of continuous modification of our urban structures as we attempt to fit it to our socioeconomic needs. Such modification usually occurs in a piecemeal and unguided way. Comprehensive city plans, where they exist, are the tools by which guided and coordinated renewal can be accomplished.

The concept of renewal is part of the important contribution which Mr. Colean has made in his very readable study of one of the major problems of our time, the decay of our cities. Summarizing the thinking of land economists as expressed in recent literature, he points out that a city is always in the state of becoming. "Dynamic" cities—those whose economic base is strong—contain a range of new, middle-aged and worn-out parts, all of which are undergoing the renewal process at various rates. Although renewal which takes place "naturally" or without benefit of special government inducements and planned control is occasionally desirable, as in Georgetown, Washington or Sutton Place, New York City, the

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results of this type of renewal are frequently inadequate. Moreover, our cities testify to the fact that such "natural" renewal is often inhibited. The author's new concept of renewal presents a refocusing of the concept of "succession" in the literature of land economics and urban ecology.

The main problem, as Mr. Colean sees it, is one of assuring a continuity of renewal. He recognizes that this can be accomplished by governmental action to change land use, but believes that it can be done at less cost and more efficiently by removing inhibitions to natural renewal through major changes in the environment of neighborhoods. These changes, when combined with enforcement of codes designed to prevent overcrowding and to require increased property maintenance, will encourage positive market decisions by owners and investors. By these measures, values based on overcrowding and lack of maintenance will be eliminated and natural renewal based on sound development can then continue.

However, these changes alone will not solve the problem. The physical evidence of decay and blight that we see around us is a symptom of deep-seated ills in our cities. Changing the physical facts of slums through clearance and the introduction of new uses is frequently nothing more than symptomatic treatment. The basic problems of cities result historically from conflicting and opposite trends of concentration and decentralization, diverse objectives in city growth, and helter-skelter development, as expressed in inefficiency and obsolete areas.

The renewal problem, as it has been stated, is differentiated from the problem of slums. Slums are felt to be "basically a problem of the attitudes and behaviors of people and the indifference of the community to the neglect and victimization of the under-privileged." They exist when overcrowding occurs together with failure of owners to maintain their properties. Mr. Colean feels that a great part of this problem can be overcome by adequate personal and municipal housekeeping, particularly by the latter through vigorous enforcement of housing codes. Although the problem of renewal is often coincident in area with that of slums, it is presented as being essentially different. "Natural" renewal can occur where a higher or better use is present and the economic means to put the land to that use are available. Obstacles to renewal are listed as: the problem of obsolete or deteriorated environments which discourage investment; traffic problems; unbalanced city costs and revenue patterns; dispersed ownership of land; speculative values; housing shortages that further support high land values; racial prejudice which magnifies difficulties created by housing shortages; legal impediments to land assembly; and finally, general market deterrents to investment in building.

Restating Mr. Colean's point, that renewal "inevitably means a higher use than the [one] existing," renewal can occur "naturally" only in areas where the increase in value of property equals the cost of improvements or repairs. Where the increase in value resulting from these improvements

is less than the cost of the repairs themselves, renewal rarely occurs because money so invested could not earn an adequate return.

While not an original contribution, Mr. Colean's thinking has had, and will continue to have, an important impact on the approach to the problem. The urban renewal concept, which has become a catch phrase, has been adopted by the present federal administration as a means of broadening the scope of the national program. The requirement that every city must have a "workable program" before federal aid under the Housing Act of 1954 will be made available, is an application of Mr. Colean's concept of the essential elements needed to remove the obstacles to renewal. In this sense, his contribution is important. However, the catch phrase contribution carries with it a danger which stems from the fact that the theoretical basis for the renewal concept has not been emphasized adequately in Mr. Colean's book. Consequently, the economic realities outlined in land economics literature have received little or no attention in the drafting of the federal program mentioned. Thus the book makes the problem seem deceptively simple and voluntary rehabilitation has been adopted in a rather naive way as the solution to conserving most of our cities.

Law enforcement is envisioned as a measure to support land value, but for this to be true, enforcement must insure that exploitative values are not permitted. Here again, a reference to the land economics theory involved would show that enforcement, in at least its initial impact on properties which do not meet code standards, would tend to drive values down rather than up by eliminating overcrowding and by requiring expenditures which are not reflected in value. Mr. Colean offers a ray of hope here by pointing out that when such improvements are made on a broad scale and according to a systematic plan, as well as in conjunction with major expenditures by the city for the introduction of parks, playgrounds, elimination of traffic hazards and general removal of neighborhood and community obsolescence, value and cost of repairs will be more nearly equated.

Some of the major problems that have emerged in the first seven or eight years of renewal activity involving the use of public power are rather briefly reviewed. These include the difficulty of attracting investors, particularly when there are long time intervals between the initial commitment and the eventual delivery of cleared land; cities not committing major expenditures to help support investment of private capital; difficulties in relocating both people and businesses; and special problems involving marginal and tenuous ownership and consequent inability to obtain financing by slum occupants. All of these problems are rather summarily handled.

With regard to the current costs of redevelopment, Mr. Colean does not quite state the case. A statement that "when land is worth so much less than the price paid for it, there is something wrong with the transac-

tion" ignores experience. There is a very close relationship between the value of land before and after redevelopment. For example, in Philadelphia, land has been sold to redevelopers at very close to its before-clearance value and, in the case of the Benjamin Franklin Parkway, the reuse value is considerably greater than the value of the land in its blighted state. The confusion arises from the fact that Mr. Colean uses the phrase "land value" in reference to both value of land plus improvements and value of cleared land. The great differential that he notes is, of course, the cost of the buildings which are demolished.

Clearance is cited as justifiable in those places where it can result in "an extraordinary opportunity for rebuilding," or where conditions of structures make demolition absolutely essential. On the other hand, where the city and its structures do not meet modern standards but where clearance is not indicated or possible, conservation is said to be appropriate. This statement brings up one of the major economic facts of life facing redevelopment agencies today. Clearance can be undertaken only where the new use envisioned can support an economic return on the investment or where the new use is public or institutional in character and earning an economic return is unnecessary. Costs of construction are high and, normally, land costs are a relatively unimportant part of total value. Therefore, as Mr. Colean says, in the absence of some kind of construction or rental subsidy, rents that must be charged for new housing will have the effect of limiting clearance to opportunity areas or "hot" sites. The challenge posed by this limiting generalization lies in the possibilities for providing housing at prices and in environments competitive with the suburbs.

The alternative to clearance within the framework of the above limitation is more efficient use of our current housing stock. Both Mr. Colean and the federal administration have emphasized correctly that this is what cities must do. Unfortunately the emphasis in each case is made without an adequate analysis of the implications of such a program. The hope that conservation and rehabilitation on a wide scale can occur through voluntary action by owners simply ignores the conditions of ownership in central city areas. Marginal ownership and poor credit standing mean that even the very lenient § 220 of the new Federal Housing Act will work only if the government assumes much greater risks than ever before. Assumption of such risks might be justifiable if major expenditures for playgrounds, etc., were to improve the neighborhood environment. But if these risks are accepted through loans under the federal mortgage insurance program, widespread lending and expenditures would require a substantial increase in rents in relation to the comparatively stationary incomes of tenants. Before such a program could be justified, it would be necessary to analyze and provide for the problems of relocation of commercial enterprises and major population shifts which would inevitably result.

A solution to some of these problems of rehabilitation, which at least one local agency in Philadelphia is investigating, follows the lead of the Friends Self-Help project in Philadelphia, reported by Mr. Colean. The agency will condemn and sell to a redeveloper both land and standing structures at less than acquisition cost. The structures will then be rehabilitated to support a 25-year mortgage, rather than being reconstructed to a 40-year life as in the Friends project. Reuse value then becomes the capitalized value of realistic net rents less the cost of rehabilitation. The rents thus achieved for "middle-aged" housing can be slightly higher than the rents now charged for substandard space in the same areas. Mr. Colean pointed in this direction when he said that the future possibilities of redevelopment lay in decreasing acquisition costs and increasing the resale costs.

Mr. Colean's book restates in a very readable way the kind of thinking that has culminated in the preparation of the Federal Housing Act of 1954. However, to those who look to Mr. Colean for guidance in solving individual problems of conducting renewal programs, the book will be somewhat disappointing. It is more for the layman than for the expert. Taken as a general statement and not as a guide to specific action, it assumes an important place in the literature that is developing in the field of land economics as a rather popularized version of some of the more detailed texts. The very recent United States Supreme Court decision¹ upholding urban redevelopment has profound implications for cities that wish to implement comprehensive plans. The opinion by Justice Douglas broadens the whole basis for the use of police power through eminent domain as a device for the translation of plans into realities. *Renewing Our Cities* will serve as a useful introduction to further study of these implications.

David A. Wallace †

CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK CITY. By Walter Gellhorn, Jacob D. Hyman and Sydney H. Asch. New York: Dodd, Mead & Company, 1954. Pp. xii, 403. \$5.00.

The bulk of *Children and Families in the Courts of New York City* is devoted to a *Study on the Administration of Laws Relating to the Family in the City of New York* by the scholars named as the authors of the principal work. The Study was undertaken at the request of a committee of the Association of the Bar of the City of New York. The committee's Report is set forth in the pages preceding the Study. Both the Report and the Study are first rate.

1. *Berman v. Parker*, 75 Sup. Ct. 98 (1954).

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When used to resolve problems of children and the family, the ordinary adversary system of litigation is inadequate to meet the needs of the community. Family problems and those of children in trouble are most happily settled if a mechanical application of legal rules is not required. To some degree in every state, "Numerous unrelated tribunals with diverse traditions and techniques participate in considering one or another aspect of the family's interrelated problems."¹ It is probable that these propositions about our legal system command almost universal assent from informed persons. The Study is concerned with ways to change existing institutions so that the propositions will be taken into account.

The Study is a comprehensive, factually documented argument urging the creation of a unified and inclusive domestic relations court to deal with family and children's problems. Probably no other proposal for the creation of a domestic relations court has been conceived in such broad terms. The recommendation of the study is that every class of proceeding involving a serious manifestation of family breakdown be placed within the new court's jurisdiction.

"In the case of children, jurisdiction is suggested where their neglect or their unsocial conduct indicates a failure of family controls. Custody disputes again indicate a collapse of the family's protective function. Adoption proceedings are designed to secure ratification of a new family relationship that will protect the child. Support proceedings seek to safeguard the economic well being of the children and to maintain the economic foundation of the marriage. Dissolution actions are direct attempts to gain legal recognition of the breakdown of the marriage. Assaultive and other disorderly behavior within the immediate family circle usually connotes a serious deterioration of the marriage relationship, associated with a loss of the kind of self control expected of emotionally stable persons."²

In family and children's matters the court needs information which the adversary process may not reveal. If mechanical application of rules is to be replaced by an "individualization" of justice, the courts must have a special understanding of the individual. Normally efforts at rehabilitation and conciliation will involve the use of skills taken from the biological and social sciences. In short, family problems require a specialized court presided over by an interested judge who has a professional staff at his command for purposes of both fact-finding and treatment.

If the power to dispose of dependent, neglected, and delinquent children, of divorce, annulment, alimony, support and custody matters, of adoption and paternity proceedings and of interfamily quarrels is scattered among many courts, cases are decided by judges who have no special qualification for handling them. Such scattered treatment prevents the development of an efficiently used and centralized staff of nonlegal personnel.

1. P. 382.

2. P. 383.

Cases which ought to be handled as units are disposed of on the installment plan.

The conclusions of the study are grounded in fact. Each chapter is crowded with a review of actual administration of relevant matters in the courts of New York City. What ought to be is suggested only after a hard look at what is. This point should be emphasized. Unless the facts are inaccurately stated (a matter beyond the immediate reach of a Minnesotan), there is little in the conclusions of the study with which to quarrel. The recommendations emerge from careful investigation. This book would be a persuasive footnote in an essay by one who would argue that our differences are most often really not disputes about "values" but disagreements about "facts," and that the battles are especially fierce because no one undertakes the distasteful and grubby job of fact-finding. I believe that the authors have performed this task splendidly.

But despite the admitted validity of the writers' conclusions, money will be a great problem. The staff necessary to inform the new court and to carry out the preventive measures desired will be large and expensive. In every instance staff members presently available to the New York City courts are overworked and underpaid. The proposal for the new court with enlarged professional facilities will take its place in the rapidly growing list of new service needs which confronts every community. Unfortunately the "savings" which result from reduced rates of delinquency and family disorganization do not always result in direct saving of tax dollars. Lawyers have no special skills as budget makers for units of local government, but the money burden which an adequate Family Court will put upon a ways and means committee is likely to be one of the chief arguments in the hands of opponents of the integrated court.

Any proposal for the liberal use of social work techniques calls forth just a little skeptical caution. One can recognize the poverty of our present ways with children's and family problems and still doubt the unlimited healing power of the casework miracle. It is said that social casework can help the individual in three ways:

“. . . by reductions of the external pressures or limitations by which he is confronted, by acquiring greater understanding of his situation and of himself, . . . [and by enabling] him to feel the worker's acceptance and positive feeling for him. . . .”³

But surely all would agree that, even if we had the money and the self-understanding and the freedom from external pressures and the acceptance and the guidance and the counseling, we still might lack what is all-important for the solution of domestic troubles. We might have everything but love.

Monrad G. Paulsen †

3. Hollis, *Social Casework*, 12 SOCIAL WORK YEAR BOOK 474, 475 (1954).

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