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Book Review. The Anti-Trust Laws of the United States

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tory of England from the particular viewpoint of judges and lawyers as a special class in society. The chapter on professional literature is a fascinating sketch. This is followed by a comprehensive essay on "External Forces," listed as civil law, canon law, law merchant, equity. Perhaps the most valuable portion of the book is the part entitled "The Methods of Progress," which treats of custom, forms of action, legislation, and precedent. This part consists of only 45 pages. Perhaps because of its brevity, it gives an excellent idea of the changing nature of legal institutions in England and their gradual but eventual adjustment to the needs of society. The general survey of English legal history is followed by almost 100 pages of detailed treatment of the law of real property and a briefer treatment of the law of contracts. There is no special treatment of the law of tort or the law of crime.

Both of these books are valuable to students as collateral reading. Either one could well be used as required reading in connection with a course intended as an introduction to law. Perhaps it is to be regretted that professors in American universities, including the authors, do not consider more sensitively the actual needs of American law students. Will it always be necessary to devote so much time to the study of the substantive side of the English land law before Coke's time? In a history of English law should not some exposition be presented of the revolutionary property act of 1922? Should not some attention be paid to the custom of London and its effect upon the attachment law of the United States? Should not some attention be paid to the custom of Kent and its effect upon the special assessment law of the United States? Is it advisable to ignore so completely the modern history of criminal law in England? Must we in America forever repeat the orthodox English formula that the period of the Commonwealth was a fruitless period in English legal history, in spite of the apparent connection between the legal thinking of that period and what we now know as American constitutional law?

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THE ANTI-TRUST LAWS OF THE UNITED STATES. Philadelphia: The American Academy of Political and Social Science (v. 147 of THE ANNALS), 1930. Pp. v, 236. Price, \$2.00.

In a symposium such as the volume under review, intended for quasi-popular consumption, there almost necessarily is included quite a bit of writing which does not penetrate very deep, as well as some that is thoroughly worth while. A reading of the present volume is not rewarded by the discovery of any original contributions to the store of thought or information upon its subject. But general thought and opinion are no less important than the researches of scholars. It is as an index to current attitudes toward the anti-trust laws that this collection of the views of lawyers, business men, public officials, and executive secretaries of organizations is significant and worth while. A few men in academic life have contributed, but they have contented themselves largely with supplying summarized information.

Important among the views expressed are those which reveal the present-day attitude of business toward the anti-trust laws. One gets the impression that many business men and the lawyers and economists who are associated with them are satisfied with the existing situation, to which they

have adapted themselves. The development of larger business units has been influenced but not prevented by the anti-trust laws as they have been interpreted. The road to be traveled in effecting corporate mergers is fairly well marked and clear of legal obstructions. Meanwhile the work of the Federal Trade Commission in defining and preventing unfair competition is eliminating certain unethical practices of which respectable business is glad to be rid. On the whole, therefore, the situation is one which business believes should be tampered with gingerly if at all. Of this mind are Myron W. Watkins,¹ J. George Frederick, Gilbert H. Montague, and Walter Gordon Merritt, all of New York.

From two quarters with the pale of business, however, dissatisfaction arises. Trade associations feel themselves hampered by the uncertain status in which the decisions leave some of their most essential activities. They wish the liberality of the courts toward business mergers and the tenderness of Congress toward agricultural cooperation to be accompanied by a changed attitude toward cooperative activity among business competitors. Their views are expressed by the Secretary-Treasurer of the National Hardware Association. Likewise the oil industry, which finds itself drowning in a flood of petroleum, wishes to inaugurate cooperation to control production. Mr. Charles B. Steele of the Okmulgee, Oklahoma Bar, sets forth typical views upon this matter. Meanwhile, ironically, organized labor demands the outright repeal of the Sherman Act upon the ground that business, at which the law was aimed, has gone its way unhindered while labor has been hampered at every turn by injunctions and damage suits under the Sherman and Clayton acts.

Out of the welter of discussion and conflicting opinion which the present symposium contains there emerges a concrete proposal for the next step in the control of business through the anti-trust laws. It is the creation of an administrative agency whose function it would be, without casting into the discard the present work of the Federal Trade Commission, to pass in advance upon proposals for business cooperation and consolidation. This plan is advocated by Colonel William J. Donovan, upon whom fell the task of enforcing the anti-trust laws during the Coolidge administration, by Professor James T. Young of the University of Pennsylvania, and incidentally by others. Adequately financed and equipped for research and investigation, such an agency would be able to evolve a consistent, intelligent public policy toward business—provided the courts could be compelled to give it a sufficiently free hand. Business men, moreover, would be given some advance assurance upon the legality of their plans. Thus would this country, which has reverted to making a fetish of states' rights and which imagines it detests "bureaucracy," naturally and inevitably create a vast bureau for the formulation and administration of a reasoned national policy toward production and marketing outside the field of public utilities.

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¹ A fuller expression of views for which Dr. Watkins is perhaps responsible will be found in (1929) *MERGERS AND THE LAW*, the final one of a series of four volumes published by the NATIONAL INDUSTRIAL CONFERENCE BOARD. Dr. Watkins' earlier ideas are set forth in *The Change in Trust Policy*, 35 HARV. L. REV. 815, 926, and are in some respects in contrast to those he now holds.