

our knowledge, than by accepting a philosophy of law, such as Professor Friedrich's, derived from highly subjective sources and rejecting the possibility of a more objective knowledge along the lines of the natural sciences.

Professor Friedrich's book is essentially a reasoned elaboration of Western political development within the framework of the predominant modern philosophical view. It is challenging, persuasive and deserving of the most careful consideration by everyone concerned with preserving individual liberty and the democratic process in this time of their greatest trial.

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Market Power: Size and Shape under the Sherman Act. By G. E. Hale and Rosemary D. Hale. Boston: Little, Brown & Co., 1958. Pp. xix, 522. \$17.50.

The Hales have written one of the few worthwhile books in the trade regulation field. It is an excellent and reliable guide to the doctrines, the reasons given in support of the doctrines, and to the cases in the area of market power. This area is hard to define. The Hales are not always consistent as to its boundaries. In general, they are discussing the problem of monopoly and not the problem of conspiracy. But their eyes wander frequently, so that we get their views on such matters as intracorporate conspiracies, allocations of territories, and something of patent license arrangements. In part, the uncertain boundaries no doubt are due to the growth of so much of the book through separate law review essays, but another explanation is the seamless web which the Hales remind us is the character of antitrust law. In the area of its principal emphasis, the book suffers from an inadequate exploration of the history, impact and probable future importance of Section Seven of the Clayton Act. But this is only to say that the book already requires a supplement which, it is hoped, the authors are now preparing in a manner as workmanlike as the present volume.

The Hales have written a work of theology, and what they have described or constructed does not always please them. They usually remain even-tempered about it all, although there are a few indications of indignation, such as when they refer to moral muddlement (which they are against), or when they conclude with a recommendation, which might be thought to involve some desperation, that Section Two of the Sherman Act should be repealed in favor of a limitation upon the over-all size of business enterprise. But these indications of indignation or desperation are exceptions from the patient examination of almost everything that anyone—lawyer or economist—has said in print in the reputable secondary materials on the monopoly problem. And briefs and congressional hearings are drawn upon also. The result is an amazing collection of rationalizations for different positions, and at times the presentation of the

views of economists whose suggestions as to economic theory would not stand the scrutiny of their betters—but we can't be sure who the betters are—and whose pronouncements in any event it is to be hoped won't have much to do with the development of antitrust law. This is to say that the Hales have enlarged the stream of economic literature which may now be referred to in legal circles, and, with due regard for the quality of the stream, this may not be an unmitigated service. Yet perhaps we should not complain that the Hales have been so diligent, and at times they do give us the benefit of their own view—or perhaps I only read this into what they have written—that so much of this learning doesn't really make much difference.

In any event, after their arduous, often brilliant, always careful and objective exploration, the Hales conclude: "On the whole . . . the impression of the previous chapters is that those who enforce the antitrust laws sail on largely uncharted seas" (p. 396), and "[s]ince we regard efforts to improve our economy through enforcement of Section 2 of the Sherman Act as something like trying to repair a watch with a steam shovel, we should prefer to abandon that legislation" (p. 404). The abandonment is to be in favor of "a limitation upon wealth"; that is, upon absolute corporate size apparently without restriction to monopoly power or effect.

Appreciation of the high quality of what the Hales have written does not require agreement with their conclusions. The Hales have admirably described a large portion of the wonderful world of antitrust—a world in which common phrases are exalted into legal doctrines with the assumption that a supporting science somewhere (whether it be law or economics is not clear) justifies the usage; a world in which inconsistent doctrines grow under the impact of hard cases and changes in view; a world, in short, of case law extended. The result is a responsive and pliable instrument, reflecting, to be sure, our own ignorance, and yet at least to some extent saving us from our ignorance through the negative value of filling up a void otherwise too inviting for more harmful regulatory schemes, such as, I fear, the limitation upon wealth which they suggest.¹ In portraying this world, the Hales have written a jurisprudence which is a genuine contribution to the literature of the law. And in laying bare, in a patient and perceptive way, the shallowness of our thought, they have brought to the law of monopoly the likelihood of a higher quality of self criticism, which should raise the level of investigation and make it possible for the future of the anti-trust law to reflect the high quality of their performance.

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¹ The Hales do say: "If, however, the choice is between public utility type regulation (or outright socialization) and enforcement of existing statutes, our choice is clearly to continue our efforts, however wobbly, to destroy monopoly" (p. 405).

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