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Law and Economic Policy in America. By William Letwin.

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BOOK REVIEW

LAW AND ECONOMIC POLICY IN AMERICA. By William Letwin. New York: Random House, 1965. Pp. xi, 304. $5.95.

This book, lest the title unintentionally be misleading, does not deal with laws, regulations, and economic policy in general. Mr. Letwin concerns himself with the problem of monopoly and the Sherman Antitrust Act. In a well-documented and lucid style of presentation, he proceeds from an investigation of the legal foundations (chapter 2), to the passage of the Sherman Act in 1890 (chapter 3), to its administration (chapter 4), interpretation (chapters 5 and 6), and modifications in 1914 (chapter 7).

The process of evolution of the antitrust laws, which culminated in 1914 with the passage of the Clayton Act and the Federal Trade Commission Act, has been cast in the legal, political, and economic environment prevailing at the time. As a result, the discussion of the underlying law and its effectiveness in cases which since have become famous, *e.g.*, *Trans-Missouri*,[1] *Addyston Pipe*,[2] *Northern Securities*,[3] and *Standard Oil*,[4] offers insights into the role of the political motivation behind the enactment of the law.

The discussion of the legal foundation of the Sherman Act is interesting, but unfortunately too limited. This discussion, and that of the subsequent decisions rendered in the cases cited above, pertains to and indicates the importance of the "rights to contract." A more systematic discussion of this concept—implied property rights in general—and the consequent changes thereof, if there were such changes, would have been welcomed.

Those who are generally interested in "law and economics" will find this book worthwhile reading. The legal background of the Sherman Act is traced to English Common Law as early as the Fourteenth Century. First, the author points out that at least until the Nineteenth Century, monopolies were creatures of law and special grants made to individuals by kings and others in "power," for the return of some benefit. None of the cases cited was the result of the free play of the market or the nature of the technologies giving rise to the particular industrial organization.

Second, the discussion of the cases that arose during the latter part of the Nineteenth and the beginning of the Twentieth Century leads the author to conclude that the Sherman Act was (a) ambiguous and (b) generally ineffective. Experts in this field have arrived at the same conclusion basing their analysis not only on the period studied by Mr. Letwin but also that since 1914. These findings are especially illuminating in the face of a generally held belief that the American economy has remained competitive due to the antitrust laws, a belief that cannot be supported by the available evidence.

1. United States v. Trans-Missouri Freight Ass'n, 166 U.S. 290 (1897).
2. Addyston Pipe & Steel Co. v. United States, 175 U.S. 211 (1899).
3. Northern Securities Co. v. United States, 193 U.S. 197 (1904).
4. Standard Oil Co. v. United States, 221 U.S. 1 (1911).

Mr. Letwin describes the nature of the dilemma that exists by the following concluding sentences:

> One can with some justice consider antitrust law as a device serving above all to *accelerate* the natural decay of monopoly power. To accelerate the breakdown is desirable, for the community is sooner enabled to benefit from lower prices. But, on the other hand, to accelerate the breakdown by government action is not altogether desirable, for the community suffers from higher taxes. Again, to accelerate the breakdown of monopoly is desirable because it destroys undue private power, but to do so by government action may contribute unduly to the power of government. One is left wondering, therefore, how to arrange matters so that the costs of the solution do not exceed the costs imposed by the unsolved problem.[5]

The question raised might involve subjective values, but it does not rest there. Everyone, except the monopolist himself, may be against "monopoly," but the question of what particular alternative will achieve the goal of eliminating or reducing the effects of monopolies is subject to objective treatment. In this context, it is important to distinguish "monopolies" that are said to arise from the so-called decreasing cost situation ("natural monopoly") from those that are artificially created by laws that restrict firm entry into the industry. Telephone, gas, and electricity are examples of the first while the second category includes taxi services, liquor stores, television and radio channels, and the medical profession.

In the United States the fields considered to be subject to decreasing costs are generally regulated by a commission, *e.g.*, the Interstate Commerce Commission (ICC), the Civil Aeronautics Board (CAB), and the Federal Communications Commission (FCC). The main objective of this policy has been to effect lower prices for the services by constraining, among other things, the rate of return on "capital." Investigations have cast doubt on the effectiveness of regulation in bringing about lower prices for the services to consumers.

Strictly speaking, the restriction of access to markets in the fields that fall under the second category is not based upon any intent to prevent the rise (or to reduce the extent) of monopoly. Although one may find various reasons given for such restrictions, one characteristic result of such policies has been the enrichment of the existing producers of the services. Ironically enough, the enrichment has at times aroused the commission's indignation. A case in point is the 1960 Congressional probe into the television network monopoly. Consider an extreme example. If one person has the only television station, for example in Austin, and the FCC will not issue additional television broadcasting licenses to anyone else, we would expect (1) the station to be more profitable than otherwise and (2) the holder of the license to have a hard time arguing effectively that he was competing actively with another television station.

Even if the problems were defined correctly, it would be fair to say that in

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general the choice of the "solution" has not been based on the accomplished results of a regulatory device. It might perhaps be considered obvious that the final results will be determined by the institutional arrangement used, and that the choice among them will have to be guided by the knowledge and the comparison of the results. But this notion, perhaps trivial, is uniquely absent in matters relating to economic policies.

Thus, the decisions pertaining to efficient working of economic institutions in general and the problem of monopoly in particular, cannot ignore the fact that (1) the laws have not been effective and (2) a by-product of "Commissions" has been to create and nurture monopolies rather than to reduce them. The decision may, therefore, legitimately involve the choice of living with a deficiency (if it exists) if the attempt to accelerate the deterioration of the monopoly by "Commissions" in fact prolongs the life of the monopolist. In a nutshell, one has to ascertain, everything else being equal, whether a monopolist dies a quicker death at the hand of technological change than at that of laws and regulations.

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