

liberty. The whole document ought to be read by all citizens who care for the perpetuity of the Republic."

John Frank has distinguished himself as a writer and has rendered a service to students of the law and courts, as well as the bar, in giving us *Mr. Justice Black: The Man and His Opinions*.

*Sherman Minton†*

CARTELS OR COMPETITION? *The Economics of International Controls by Business and Government*. By George W. Stocking\* and Myron W. Watkins.\*\* New York: Twentieth Century Fund, 1948. Pp. xi, 516. \$4.00.

This is the second in a series of three studies growing out of a notable survey by the Twentieth Century Fund on the subject of international and domestic monopoly. The first, entitled *Cartels in Action, Case Studies in Business Diplomacy*, published in 1946, described the formation, growth and specific effects of cartels in eight industries.<sup>1</sup> The third volume will survey the progress of concentration of industrial control in the United States.

In recent years literally hundreds of volumes of new facts have come to light on the subject of cartels and monopoly. There have been a number of notable Senate investigations such as those on the National Defense Program (Truman), on Patents (Bone), on Scientific and Technical Mobilization (Kilgore) and on the Elimination of German Resources for War (Kilgore). There have been scores of anti-trust cases, hundreds of wartime intelligence reports, and many boxes of files seized by the Alien Property Custodian. There has also been extensive documentation here and abroad relative to various United Nations' conferences on shipping, air transport, food and agriculture, tariffs and the proposed Charter for an International Trade Organization.

Merely to survey such a wealth of material is a Herculean job. But Professors Stocking and Watkins have made

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† Judge, United States Court of Appeals for the Seventh Circuit.

\* Chairman, Department of Economics, Vanderbilt University.

\*\* Professor of Economics, New York University.

1. Sugar, rubber, nitrogen, iron and steel, aluminum, magnesium, electric lamps, and chemicals.

analyses and syntheses thereof with the skill and insight of genius.

Their findings are incontestable:

Cartels restrain trade and production, raise prices, and deter investment; they foster the misallocation of resources, protecting uneconomic producers against competition. In short, cartels detract from the world's ability to create wealth, and impede the most desirable distribution of the wealth that is created. They substitute the conclave of private businessmen or government diplomats for the open market place as the source of decisions as to what shall be produced and where, on what terms and where it shall be sold.<sup>2</sup>

So far as recommendations are concerned, there runs throughout the volume a comparison of five possible types of basic policy:

"Experience has shown that a *let-business-alone* policy leads to monopoly, not competition. . . . *laissez faire* would amount to an official endorsement of cartels. . . . freeze the status quo and perpetuate vested interests."<sup>3</sup>

Deliberate *encouragement* of cartels hinders "foreign competition by tariffs, and in other ways draws on public wealth to aid private concentrations of economic power."<sup>4</sup>

*Acceptance* of cartels, coupled with attempts to regulate them even nationally, has in no instance proved successful and in Germany proved disastrous. "To devise effective administrative machinery for the regulation of international cartels will remain an insoluble problem until this becomes One World politically as well as economically."<sup>5</sup>

*Nationalization*, while destroying private domestic cartels and monopolies, substitutes government trusts and state trading. "If businessmen fail to recognize that elimination of cartels may be a necessary price for continuation of private enterprise, by their cartel affiliation they may become, in effect, brothers-in-arms of socialists and communists."<sup>6</sup>

2. P. 408-9.

3. P. 380 (*italics supplied*).

4. P. 412.

5. P. 282.

6. P. 414. This statement is made, not by Professors Stocking and Watkins, but by the Twentieth Century Fund Committee on Cartels and Monopoly in its report on "A Cartel Policy for the United States." Ch. 12, pp. 403-452. The members of that committee are James M. Landis, A. S. Goss, Marion Hedges, Donald M. Nelson, Jacob Viner, and J. Raymond Walsh.

The policy recommended both by the authors and by the Twentieth Century Committee on Cartels and Monopoly is the twin policy of *effective preservation of free competitive enterprise* at home, coupled with *adoption and improvement of the proposed Charter for an International Trade Organization*.

To preserve and restore free markets at home means much more than larger appropriations, stiffer civil penalties and reinvigorating amendment of the anti-trust laws.

It would be necessary to remove quantitative restrictions on imports, to reduce tariffs drastically, and to give up nationalistic exchange controls. It would require a thorough overhauling of the patent system, eliminating the privilege of sabotaging technology through restrictive licenses and patent pooling. It would also require policing international trade to insure observance of the rules of the game, such as those relating to commodity standards, fair trade practices, nondiscriminatory licensing. Perhaps above all, it would require simplification of corporate structures and establishment of suitable statutory standards for corporate organization.<sup>7</sup>

Needless to say, any book so full of new facts and challenging recommendations as this one by Professors Stocking and Watkins is impossible to summarize and difficult to review. It would be easy and fruitless to pick flaws in presentation or differ about recommendations. Cartel issues, as they point out, are complex.

They touch practically every aspect of modern economic life—prices, technology, employment, investment, income, the whole range of interests encompassed by work, wealth, and welfare. Moreover, they reach beyond the economic sphere. At practically every turn they involve political sentiments and government policies. . . . strategical military implications, ideological undercurrents, and emotional overtones. . . . But they acquire a certain unity when conceived in terms of the perennial and pervasive issue of economic freedom versus economic security.<sup>8</sup>

It is the last point that seems to me most vital for it is particularly on that issue that Professors Stocking and Watkins are presenting an epoch-making contribution to economic literature. They squarely face the acute dilemma created by modern technology: How reconcile economic ef-

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7. P. 380.

8. P. 373.

iciency and individual liberty? How can masses of workers and consumers be integrated into the disciplined routine and standardization needed for large-scale mass production without sacrificing the basic qualities of individual self-reliance and creative self-expression necessary to the free and wise determination of public policy by "consent of the governed"?

"Year by year," states the 1948 Report to the President of the Council of Economic Advisers, "the control of the market is passing more largely into the hands of the large corporations, not only by internal growth, but by the absorption of smaller firms." The requirements of capital and technological efficiency present almost insuperable obstacles to the appearance of new competitors. In a large—if not dominant—sector of the economy, enterprise is neither free nor competitive.

Instead there have grown up large financial and industrial agglomerations, cartels, and multi-product concerns or communities of interest such as the famous *Interessen-Gemeinschaft Farbenindustrie*, more familiarly known as I. G., which concentrate into the hands of a co-optative managerial class of executives more or less arbitrary rule-making power over prices, output, capacity, employment, wages, and conditions of labor. Nationwide and supra-national economic governments have been set up, similar to political governments in organization (executive, legislative, administrative bureaucracy, treasury, et cetera) and sanctions (pricing or taxing power, and control over jobs, bank credit, markets). The larger among these economic empires command ampler revenues and more employees than are commanded in the service of the national governments of all but a few of the larger nations in the United Nations. The assets they administer are greater than the total assessed valuation of the property of any except the biggest half dozen of American states.

The central problem of the twentieth century is that of harmonizing the activities of such economic *états dans l'état* with the democratic objectives and programs of popular government. Unlike political regimes constantly subject to antagonistic scrutiny of business forums and press, constantly "deriving their just powers from the consent of the governed," the self-perpetuating directorates of large corporations, holding companies, or cartels make decisions af-

fecting the lives and fortunes of thousands of laborers, consumers and others without the necessity even to consult—much less to be bound by—the views of those governed. Inevitably a conflict of jurisdiction arises with the democratic state. Those disadvantaged or frustrated in the business hierarchy seek redress through the mechanisms of politics.

In foreign economic policy this dichotomy is singularly mischievous. A sweeping anti-cartel policy is advocated by a nation that is the home of big business. Full-page advertisements concerning the virtues of free enterprise and freedom of trade are paid for by the very associations which are ceaselessly advocating numerous and increasing exceptions to the ant-trust laws (Webb-Pomerene Act, basing-point legalization, Miller-Tydings Act, Reed-Bulwinkle Bill), engineered by organized special-interest lobbies. The rest of the world is treated to high moral lectures on the blessings of liberty and democracy at the same time that representatives of American business and banking interests, clothed with governmental and military immunity, rebuild monopolistic cartels and restore top Nazis to power in Germany and Japan, back feudal and corrupt regimes hated by the peoples of Greece and China, and court the avowedly fascist dictators of Argentina and Spain.

A world urgently needing American leadership cannot help asking the question posed by Professors Stocking and Watkins. Which is it: *Cartels or Competition?* Nor should thoughtful observers miss one iota of the significance of the sub-titles *Case Studies in Business Diplomacy* and *The Economics of International Controls by Business and Government*. The authors and the Twentieth Century Fund are to be highly commended for spotlighting this titanic upsurging power which, like the volcanism creating mountain barriers, has distorted and metamorphosed much of the modern industrial and business structure.

On another occasion I have labeled these technological genii "business *haute politique*,"<sup>9</sup> defining the term as the underlying originating activity which planfully utilizes naked power tactics to negotiate and enforce restraints upon competition, whether in the form of private cartel agreements, (patent contracts, communities of interest, et cetera) or in

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9. Kreps, *Cartels, a Phase of Business Haute Politique*, 35 AM. ECON. REV. 296-311 (1945).

governmental measures (tariffs, administrative regulations, commercial treaties, commodity agreements, and so on). Such power may be directed against competitors, suppliers, customers, distributors, labor organizations, economic liberals in government, universities, and so forth, *i.e.*, against all who may be suspected by precept or program adversely to tend to affect the profits, honor or security of the businessman or his interests. Such business activities are both totalitarian (embracing the entire industry) and collectivistic (requiring group action and adherence).

When industrial and economic power groups capture the government as they did in Fascist Italy, Nazi Germany, Spain and Japan, there emerges the terrifying monolithic totalitarianism of international fascism. When the government eliminates big business, the result in a mild form is the nationalization program of British socialism and in virulent form is communism.

Whether the twentieth century can peacefully find a *modus vivendi* between gigantic business and the State, or whether it will witness a succession of wars such as characterized the sixteenth century struggle between Church and State, is the crucial problem of this generation. World War II—precisely such an international Civil War with its fifth columnists and partisans—may be but a prelude to atomic holocausts unless this big business-democratic government dichotomy is speedily resolved.

Needless to say, the solution does not lie in further bipolarization—mass against class, or East vs. West—but in some *via media* such as Erasmus, Roger Williams, William Penn and other advocates of tolerance, reason, compromise, and brotherhood worked out for peaceful relationships between Church and State three centuries ago.

*Theodore J. Krepst*†

THE ROOSEVELT COURT: A Study in Judicial Politics and Values, 1937-1947. By C. Herman Pritchett.\* New York: The Macmillan Company, 1948. Pages xvi, 314. \$5.00.

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† Professor of Business Economics, Graduate School of Business, Stanford University. Formerly Economic Adviser, Temporary National Economic Committee.

\* Associate Professor of Political Science, University of Chicago.