Obviously to meet this challenge first year property teachers will either have to omit some of the material now covered in their already truncated courses, or they will have to soft-talk their colleagues on the faculty into letting them add a credit of time to their courses. Incidentally, the soft-talk will be more effective if some of the non-property men on the faculty can first be induced to look into this book.

Other law schools are trying to meet the challenge by including land use control materials in second or third year property courses. A few have set up separate courses or seminars. Not since McDougal and Haber's *Property, Wealth, and Land*[8] has such an "unduckable" challenge been hurled at first year property teachers.

J. H. BEUSCHER†

THE FEDERAL ANTITRUST POLICY: ORIGINATION OF AN AMERICAN TRADITION. By Hans B. Thorelli.* Baltimore: The Johns Hopkins Press, 1955. Pp. xvi, 658. $8.00.

A lawyer, accustomed to find books on current legal problems equipped with "pocket parts," to include the very latest word, is somewhat taken aback by a book on antitrust law which straightforwardly and unashamedly stops in 1903. Dr. Hans B. Thorelli's book, *The Federal Antitrust Policy: Origination of an American Tradition* does just this. Yet it may safely be predicted that this book will be recognized as required reading for any serious student of antitrust law and lore.

The book, of course, serves totally different purposes from those which deal with the latest developments in that field;[1] for it serves to constitute a new base of departure from which to analyze those developments. Furthermore, the book does not purport to describe what will or should be the development in the future, unless one may safely extra-

8. 1948.

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* Dr. Thorelli is eminently qualified for the study he has made. A citizen of Sweden born in New Jersey, he holds an LL.B. degree, an M.A. degree (Economics, Political Science and Statistics), a Ph. Lic. in Political Science, and a Ph.D. degree from the University of Stockholm. He has done graduate work in Northwestern University and a significant amount of rescarch in many places throughout this country, including the Department of Justice and the National Archives. He has done much work in the antitrust field in Sweden and serves as Consultant Economist to the Ad Hoc Committee on Restrictive Business Practices of the Economic and Social Council of the United Nations in New York.

1. For example, DIRLAM AND KAHN, FAIR COMPETITION; THE LAW AND ECONOMICS OF ANTITRUST POLICY (1954).

polate the events and statistics. The book, then, is primarily historical. Its principal contributions to the literature of antitrust seem, to this reviewer, to be these: First, it gives an exceedingly well written and scholarly synthesis of material not elsewhere available or available only in widely scattered sources. Antitrust lawyers will be surprised to find that Dr. Thorelli has uncovered one case which does not appear in the legal literature. Second, by bringing together materials from many disciplines, the book gives a clearer picture of the early development of the antitrust concept. At the risk of serious omission, the reviewer would point to these disciplines represented in the book: Law, Economics, Sociology, Religion, Politics, Public Opinion, and even occasionally the natural sciences. The natural sciences' impact on the field of antitrust takes the form of applying Darwin's notable thesis to the problem of survival in the economic struggle which surrounds us. If, in fact, the fittest survive in the economic struggle, one is tempted to fold one's hands, face the unavoidable, and in a sense let the devil take the hindmost. One does not legislate against the inevitable.

Third, a restudy of original materials has enabled the author to challenge some accepted theorems of antitrust. After reading the definitively told history of the administrative policies of the first four presidential administrations following Sherman's enactment, one is unwilling to oppose Dr. Thorelli's conclusion that if the Sherman Act was weak in its infancy the fault did not lie with the courts. The Presidents, acting through their cabinets and particularly their Attorneys General, deserve any blame that is to be placed.

At this point one might observe the liveliness of Dr. Thorelli's book by comparing it with the traditional law book on antitrust. Traditionally, the opinions of the judges, applied of course to the facts in the cases, constitute the meat of the discussion. The author puts that material in context, so that behind the case one senses the practicalities of life. Perhaps the case represents merely the unsuccessful investigations performed by an enforcement agency not provided with ample funds for a complete job. Perhaps the case would have been more zealously pressed by an Attorney General not selected from the elite of the corporation bar. Perhaps different test cases could have been chosen, for one must reflect on the evaluation of one United States Attorney that a particular case was "an extremely popular one." Lawyers are familiar with the adage that hard cases make bad law, but scarcely with a maxim that popular cases make good law. By putting the materials in context, Dr. Thorelli is able to suggest certain conclusions as to the efficacy of the Sherman Act and the relative importance of certain cases construing that act.

Certain cases, particularly *United States v. Addyston Pipe and Steel Co.*,[2] grow in stature. Other cases lose some of their glamour. Furthermore, by painstaking research, the author has collated the private suits involving antitrust problems in a much more ample way than has been done elsewhere.

The complexity of the many detailed facts and conclusions related by Dr. Thorelli is naturally beyond the scope of analysis of this brief review. One could not recite the confused and conflicting views toward antitrust in any shorter form than the author has done, so the book must speak for itself. The book is cleverly arranged with convenient summaries and conclusions at the end of each segment . Finally, in the third and last part of the book, the author draws together his conclusions and summations. The hasty reader can, therefore, skim judiciously through the summary chapters and get the sense of the book. By the same token, persons may select those portions germane to their particular interests. Each group will find new insights worthy of consideration.

The entire area of government and business is a challenging one, for it centers around the extent of freedom which exists in our economic life. But it does not stop there, for if economic freedom is destroyed, political freedom cannot long survive. Unfortunately, one man's freedom is another's bondage. If one business man is "free" to enjoy the market without interference, other men are *a fortiori* not free to compete. No one, of course, in an environment where freedom has any meaning, argues that all men are free to monopolize. That is a pseudo-freedom. But we all defend to the utmost our freedom to compete. Such a freedom is a basic tenet of our economic system. That freedom, though, has a fault in common with all enjoyable freedoms: it is not absolute. Predatory competition is opposed by the least sophisticated, but this may be only after the most sophisticated have identified a particular tactic as predatory. And the economic effect of a monopoly obtained by predacity may not differ from a monopoly which results from honest endeavor.

If all trusts were good, or even if all trusts were bad, the problem of legislating would be simplified. But the classification is not that easy. Yet effective legislation cannot be limited by the comparative skill of the legislature to enumerate, and those acting under legislation to vary. One can readily point to examples of specific statutes being rendered valueless by their very specificity. At this point one may turn with interest to a particular paragraph from the book. The author writes:

2. 85 Fed. 271 (1898).

> It must be said that the "solution" of the trust problem represented by the Sherman Act was an elegant one. The complexities of the problem were enormous, its multifarious details imperfectly known. Rather than attempting the grueling task of defining once and for all the multitude of forms in which the evil might appear Congress resorted to a few concise phrases of exceedingly broad significance. The beauty of the solution lies in the fact that these phrases had long since taken on a *certain* concreteness of meaning at common law and that in applying this act the federal courts could be counted upon to make use of that *certain* technique of judicial reasoning characteristic of common law courts. Aware that the modes of restraint will vary considerably from one industry and period to another, Congress thus deliberately provided for a *certain* degree of flexibility in the law.[3] (Emphasis added.)

One should note that the word *certain* appears three times in the quoted paragraph. Once it means fixed or settled (that is, a settled concreteness), then the word seems to mean thoroughly established (as describing judicial techniques), and finally it seems to specify as a "certain degree." But is this the type of certainty required in the solution of a legal problem? Or rather should a business man have a specific, certain (now in the sense of clear and indubitable) guide to his conduct. Perhaps here again the viewpoints of the economist and the lawyer may be expected to differ.

Monopoly has, as Dr. Thorelli's book demonstrates, not always, meant the same thing to all users of the term; economists and lawyers rarely agree on its meaning. Similarly, the element of "intent" to monopolize is far more significant to the lawyer than it is to the economist. And it may well be that the lawyer sees the need for particular guidance for his clients, rather than for a general statute of broad meaning which may catch his clients as a trap for the unwary. Stated differently, does the Rule of Reason not give Sherman a broad coverage at the expense of certainty which only an enumeration of certain *per se* violations can produce? Is the "certainty" of our present law as ambiguous as the word "certain" in Professor Thorelli's paragraph? Certainly that question was not answered in 1903, and it is not definitively answered yet. But one may well pay homage to the judicial minds which have at least made workable to date a statute worded so broadly as to apply to such diverse fact patterns as a partnership agreement between two corner grocers or

3. P. 571.

to the W.C.T.U. If the statute has been an elegant one, the courts have, it would seem, acted elegantly.

One may only hope that the author's work will not cease with the completion of the present thesis. The work ahead of him would seem to be more onerous than the work he has completed, yet certainly the years since the period covered by his study are greater in current interest. The Sherman Act itself has been supplemented, or "as some would say, mutilated,"[4] by many subsequent statutes, special and general. The background and effect of those statutes is surely as important as those of the Sherman Act. The study has, in short, just begun.

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UN: THE FIRST TEN YEARS. By Clark M. Eichelberger.* New York: Harper & Brothers, 1955. Pp. xii, 108. $1.75.

James T. Shotwell characterizes *UN: The First Ten Years* as a study "of the most challenging political institution of our time, or, for that matter of any time."[1] The book is not intended to be a detailed history of the United Nations. The author instead has aimed "to present in a few bold strokes a picture of the development of the United Nations against the background of the major crises with which it has had to deal."[2] He wishes his readers to "see the United Nations as an evolving international society in which the American people and their government must play a very important part."[3] In the opinion of the reviewer there can be no doubt that the author has succeeded in his aim. Eichelberger's book is a good antidote to such books as *The U. N. Record: Ten Fateful Years for America* by Chesly Manly. In Manly's opinion the United Nations has failed to attain its purpose, has no moral authority because

4. Dorr, *Philosophy of the Sherman Law,* Proceedings of the Annual Meeting of the Section of Anti-trust Law, American Bar Association, Philadelphia, 1955, at page 14.

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1. P. xi.
2. P. ix.
3. P. ix.