

segregation gradually disappear. The Negroes may be the mid-twentieth century version of the German, Scandinavian, Irish, Bohemian, Polish and Italian minorities that came before them. If this is so, the future of segregated housing in Northern urban centers is dependent on all the factors, such as occupation, income and education, that condition the social status of Negroes. And the location and segregated nature of public housing may in many places be dependent on these same factors.

QUINTIN JOHNSTONE†

MONOPOLY IN AMERICA. By Walter Adams and Horace M. Gray. New York: The Macmillan Company, 1955. Pp. xv, 221. \$3.50.

"THE Government as Promoter," the subtitle of this little volume, supplies the key to the authors' thesis that government today "frequently puts together the very power concentrates which the antitrust authorities are later called upon to break asunder."¹ This thesis is tested in five fields of governmental activity: public utilities regulation, tax policies, defense procurement, surplus property disposal and atomic energy. In each area the authors find that governmental power has been used to promote rather than to dissipate monopolies.²

Messrs. Adams and Gray quote Scripture in support of the position that "among all the devices used by government to promote monopoly, public utility . . . regulation is in some respects perhaps the worst."³ They recommend a gradual transition toward unbridled competition in trucking, shipping and air transport, suggesting that governmental activity in these fields should be confined to maintaining safety and to enforcing the antitrust laws so as to maintain a maximum degree of competition.⁴ And they urge a drastic reversal of the federal policy that promotes monopoly in television, notwithstanding the limitations of technology.⁵

In dealing with tax policies,⁶ the authors inveigh against depletion deductions because they "accrue primarily to large integrated manufacturing firms,"⁷ and accelerated amortization because it is "a boon to a relatively few large corporations."⁸ They also criticize the tax incentives to financing by retention

†Visiting Professor of Law, Yale Law School.

1. P. vii.

2. The authors state in a footnote in the preface that they use the word "monopoly" not in the "dictionary sense" but to denote an industry situation where one or a group of firms "possess substantial economic power." P. vii. This use of the word monopoly was disconcerting to this reader; it could seriously mislead the unwary.

3. P. 39.

4. P. 61.

5. P. 52.

6. C. IV.

7. P. 83.

8. P. 87.

of corporate profits because they promote industrial concentration.⁹ Finally, they favor use of the power to tax and spend as "a powerful tool" to make our economy more competitive¹⁰ without, unfortunately, telling us precisely how and where this is to be done.

The discussion of defense procurement¹¹ lays great stress on the General Motors tank contract, berating the Department of Defense for concentrating the manufacture of medium tanks in one company. There may have been sound arguments against awarding the tank contract to General Motors. But it is open to serious question whether the award of the contract to Chrysler rather than General Motors would have promoted competition. Dixon-Yates also comes in for lambasting in this chapter. Here also, it is not easy to see the antitrust consequences of the decision to make or abrogate this contract, whatever may be said of the other policy reasons for disapproving the deal.

The authors make their strongest case in their discussion of the federal government's disposal of surplus property.¹² They roundly condemn the sale of the Geneva facilities to United States Steel, and likewise the government's policies in disposing of the synthetic rubber facilities. But the authors do commend the disposal policies in aluminum, and allow that the aggressive efforts of the surplus property disposal agencies "considerably weakened" Alcoa's market power.¹³

The chapter on atomic energy¹⁴ is highly critical of the Atomic Energy Act of 1954.¹⁵ It is predicted that the Act will have the effect of throttling competition and restricting opportunity because the law neither promotes nor protects competition in an industry which by its nature is hard to enter.¹⁶

In the opening and concluding chapters Messrs. Adams and Gray philosophize on the "ambivalent" attitude of Americans towards private concentration of economic power, which they feel underlies the ambivalent role of the government.¹⁷ They assert, without citation of authority, that since 1940 there has been a "retreat from the traditional antimonopoly policy which for over three hundred years has prevailed in the Anglo-Saxon community."¹⁸ Surely they are misinformed if they believe that there has been any long-prevailing policy

9. P. 95. The authors do not mention Subchapter C of Chapter 1 of the Internal Revenue Code of 1954 on Corporate Reorganizations. By authorizing tax free exchanges of capital stock in certain circumstances, these provisions have encouraged many smaller businesses to sell out to their larger competitors.

10. P. 100.

11. C. V.

12. C. VI.

13. P. 132.

14. C. VII. This chapter originally appeared in the *Columbia Law Review*. Adams, *Atomic Energy: The Congressional Abandonment of Competition*, 55 COLUM. L. REV. 158 (1955).

15. 68 STAT. 921 (1954), 42 U.S.C. §§ 2011-2281 (Supp. 1955).

16. Pp. 158, 163.

17. Pp. 1, 179 n.1.

18. P. 1.

in England opposed to private concentration of economic power.¹⁹ In this country there has been conflict and confusion concerning anti-monopoly policy but no recent "retreat" has been discernible from the vantage point of this reviewer.

Contrary to the authors' suggestion, the ambivalence and confusion in our policies is not something new; it appears to have existed for generations.²⁰ Moreover, it has been reflected in the attitude of the judiciary in interpretations of the law against monopolization as well as in the policies of the two other co-ordinate branches of our federal government. While interpretations of the Sherman Act changed significantly in the quarter century between the opinion of the Supreme Court in the *United States Steel* case²¹ and that in the second *American Tobacco* case,²² even absolute power over the market has yet to be condemned per se under our "charter of freedom." Intent—that will-o'-the-wisp in the law—continues to dominate the definition of monopolization. Market power to exclude is not yet the sole ingredient of monopolization; there must be, in addition, proof of an "intent," "purpose" or "desire" to use that power.²³ As a consequence, a putative monopolist having absolute power to exclude may still escape condemnation under the law on the ground that he has not been shown to have manifested any desire to exercise the power. Thus, the judicial definition of monopolization contains the same ambivalence towards concentration of economic power that is found in the attitude of the two other branches of our government and in that of the general public.

Messrs. Adams and Gray have neatly highlighted the conflict in policy in governmental activities, and the consequent encouragement to private economic concentration in this country. But they have not made a careful, detailed study of the facts upon which to build a program for that reform which they so ardently seek. There is a real need for a study that would delineate precisely the areas in which, and the extent to which, our governmental policies promote economic concentration. Until such an analysis is made there can be no intelligent reorientation of policy.²⁴

VICTOR H. KRAMER†

19. See 22 *ENCYCLOPÆDIA BRITANNICA* 515, 521 (1951).

20. The very authority relied upon by the authors (p. 179 n.1) asserts that governments "have *never* been able to make up their minds" on the monopoly question. (Emphasis added.) MACHLUP, *POLITICAL ECONOMY OF MONOPOLY* 182 (1952).

21. *United States v. United States Steel Corp.*, 251 U.S. 417 (1920).

22. *American Tobacco Co. v. United States*, 328 U.S. 781 (1946).

23. *Id.* at 809-11.

24. Interested readers may wish to compare this review with that of Senator Douglas in his Introduction to the book. Pp. xiii-xv.

†Chief, General Litigation Section, Antitrust Division, U.S. Department of Justice. The opinions expressed in this review are those of the author and do not necessarily reflect the views of the Department of Justice.