

said in a moment of revealing retrospect: "The hard months at Nuremberg were spent in the most enduring and constructive work of my life."²⁵

Perhaps Jackson never should have been a judge. It is at least true that his chief talents were not judicial ones, and it is questionable whether coming generations of lawyers and judges will put a high premium on his judicial achievement. Almost certainly, when future critics have discounted Jackson's verbal brilliance they will not find in the residue a contribution comparable to that of Hugo Black, the judge whom Jackson apparently regarded as "the mind and heart of an opposition party."²⁶ For present purposes it is sufficient to recognize that Jackson's last book is the work of a man who felt he should write about the judicial process but had very little to say.²⁷ At all events, it is a misnomer to describe the book, in a lawyer's poetic way, as "a remarkable testament"²⁸ or even as "a remarkable legacy."²⁹ There are in the book a few sentences of acrimony which, for good or bad, are reminiscent of a brilliant advocate. But the rest is silence.

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POLITICS, PLANNING, AND THE PUBLIC INTEREST: THE CASE OF PUBLIC HOUSING IN CHICAGO. By Martin Meyerson and Edward C. Banfield. Glencoe, Illinois: The Free Press, 1955. Pp. 353. \$5.00.

It is common knowledge that racial segregation is not restricted to the South. Every major industrial city in the North has a separate all-Negro community characterized by high population density, a very heavy percentage of slum dwellings, and steady expansion into whatever contiguous areas it can penetrate. The Northern pattern of segregation is much less severe than that of the South, but it has created serious problems in many areas—among them, housing. Rapid increase in the Negro population of Northern metropolitan

25. Dean, *Mr. Justice Jackson: His Contribution at Nuremberg*, 41 A.B.A.J. 912 (1955).

26. Jaffe, *supra* note 23, at 986. The philosophic differences between the two were profound; so, too—at least for a time—were the personal differences. Jackson, it will be remembered, felt that Black took advantage of Jackson's absence at Nuremberg to lobby against Jackson's elevation to the post of Chief Justice. Out of this seems to have grown Jackson's ill-founded public attack on Black for not disqualifying himself in *Jewell Ridge Coal Corp. v. Local 6167, United Mine Workers*, 325 U.S. 161 (1945). See *RODELL, NINE MEN* 282 (1955); Frank, *Disqualification of Judges*, 56 *YALE L.J.* 605 (1947); Jaffe, *supra* note 23, at 986-88.

27. The book's many references to and quotations from Justice Cardozo suggest that Jackson had taken the great lectures on *The Nature of the Judicial Process* as his model.

28. Griswold, *The High Court in a Democratic System*, N.Y. Herald-Tribune, Book Review Section, July 10, 1955, p. 2.

29. Cahn, *Balance in the Scales of Justice*, N.Y. Times, Book Review Section, July 10, 1955, p. 1.

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centers, caused in large part by continuing migration from the South, accentuates these problems. In the past fifteen years, for example, Chicago's Negro population has grown from 275,000 to 625,000.

Politics, Planning, and the Public Interest illustrates some of the frictions that segregation is causing in the North, in a detailed account of the public housing site selection fight that took place in Chicago between 1949 and 1951. The authors are both social scientists now teaching at major universities; one of them, Meyerson, was intimately associated with the site selection controversy as former head of the Chicago Housing Authority's Planning Division.

Under the Federal Housing Act of 1949,¹ Chicago had a chance to secure a heavy federal subsidy for as many as 40,000 public housing units. Formal approval of the projects had to be given by the Chicago Housing Authority, an independent municipal corporation whose commissioners were appointed by the Mayor; the Chicago City Council; and the Federal Public Housing Administration. Bitter disagreements about site selection developed between the Authority and the City Council; and before a final decision was reached, the Mayor, the Public Housing Administration, property owners' associations, religious leaders, racial organizations, newspapers, and a miscellany of other groups were drawn into the fight.

The basic site selection problem was whether or not the new projects were to be located outside the existing Negro area. The Authority and its supporters favored sites largely outside the area. These would have enabled most of the construction to be on previously vacant lands, displacing a minimum of persons and adding to the total volume of housing in a city with a serious shortage of low rental residential units. Adequate vacant tracts did not exist inside the Negro community. Also, projects outside the Negro area would increase the possibility that a substantial percentage of white families would occupy the new dwellings; the Authority believed that public housing should not be solely for Negroes, and that the projects should be racially integrated.

The Authority's opponents objected to locating the projects in white communities because they feared that it would mean a heavy influx of Negro families, and result in the surrounding area also becoming Negro. The pattern of segregation in Chicago, as in Northern cities generally, is that whites will not live in the same neighborhood with Negroes. The whites may at first resist the influx of Negroes; but if they come in anyway, the whites will move away. The core of the opposition to the Authority was a small bloc of aldermen who controlled the City Council. These aldermen were politically obligated to support public housing in the abstract, but opposed to its being located in their own wards. However crude their methods, they undoubtedly represented the wishes of their wards and probably of most Chicagoans.

The Authority, feeling itself strong enough to defy the aldermen, decided to make a public fight on the issue. After two years of well-publicized hearings, investigations, reports, and maneuvering by competing groups, the Authority lost. Sites were approved for a large volume of new housing, but

1. 63 STAT. 439 (1949) (codified in scattered sections of 12, 42 U.S.C.).

most of it was in Negro communities, and most of it required the demolition of existing dwelling units.

In an objective hindsight analysis, Meyerson and Banfield indicate that the Authority made serious tactical mistakes. The fight probably should not have been a public one; in any event it should not have been allowed to drag on as long as it did, for many supporters of the Authority lost interest, and so did the newspapers and the public at large. In all likelihood, more could have been gained by a private compromise agreement with the aldermen. The Authority expected strong support from Negro groups, who in fact remained rather apathetic. The Authority overestimated the strength and personality of the Mayor and underestimated the strength of the aldermen. Finally, the representatives of the Authority were not persons who acted, thought or talked in terms that the aldermen could respect or trust; instead, they had the values and mannerisms of high-minded career executives from an intellectual and social class alien to the ward politicians who ran the city. This discrepancy is not uncommon in American government, particularly between appointees and elected representatives. Although in an ideal society there may be no question about the incidental traits of government officials, the unfortunate fact is that in Chicago local government the personality of the career intellectual is not conducive to political success either by combat or by compromise.

This book suggests a number of generalizations about public housing in this country. The moral of the story it tells is that planning of public housing is a meaningless intellectual exercise unless political reactions to the plans are effectively anticipated. The book points out that opposition to public housing can be expected from the very slum areas and slum dwellers that it seeks to benefit. Slum communities have vested commercial, political and religious interests that are antagonistic to public housing because they are weakened by the dislocations it brings. And deep neighborhood attachments exist in even the most squalid areas, often giving rise to vigorous resistance to change. Among the interesting incidental information the book offers are the facts that small public housing projects are more expensive per unit to build and manage than are large ones, and more likely to decay into slums; and that resentments against the management of public housing projects have developed that are more intense than the customary one between landlords and tenants of privately owned premises.

On the racial aspect of housing Meyerson and Banfield have some encouraging observations to make. In discussing the reasons why whites are so opposed to Negroes moving into white neighborhoods, the authors noted not merely feelings of superiority over dark skinned people and fears of property values deteriorating, but an antipathy to Negroes because of their lower social status.² An implication of this finding may be that the Negro in Chicago and other big Northern cities will be able to progress in the same way that other ethnic minorities have. With improvements in their class position—and the Negro class position is improving—prejudice and inequality may decline and housing

2. Pp. 103-04.

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.

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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

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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

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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.

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