

of the antitrust and trade regulation laws. The Sherman Act is now three-quarters of a century old. The Federal Trade Commission Act²¹ and the Clayton Act²² have just passed the half-century mark. Many and divergent cases have been decided and much has been written. It is time for an experienced administrator and practitioner to reappraise the policies, practices and decisions underlying and manifested by these laws. Thus, it would seem that what was intended as a "modest effort," *i.e.*, a primer for businessmen (no insignificant feat in itself), may become much more—a perspective for specialists, judges, legislators and teachers. In this respect, regardless of changes in the specifics of the law,²³ this book will retain its vitality for some time.

BERNIE R. BURRUS*

MISSISSIPPI: THE CLOSED SOCIETY. By JAMES W. SILVER. Harcourt, Brace & World, Inc., New York, 1964. Pp. v, 250. \$4.75.

This book starts and finishes (except for the appendices) with the riot which took place at Oxford, Mississippi on September 30 and October 1, 1962, on the occasion of the admission of James H. Meredith, a Negro, as a student to the University of Mississippi. In his prefatory note, Professor Silver, with considerable accuracy, calls the riot by his fellow Mississippians "a mad insurrection against their own government," and says that to him "it was and still is nothing less than incredible."¹ The events culminating in the riot were very nearly unbelievable, involving as they did not only extreme violence and emotion but also the strange failure of communication between societies which appear to use the same language, yet use identical words to express entirely opposite things. The central part of *Mississippi: The Closed Society* does much, despite its author's own statement, to make the incredible seem not only capable of belief, but inevitable. It is a fascinating story, well told. I recommend it to everyone but particularly to those who need proof of the immense diversity developed under the

²¹ 38 Stat. 717 (1914), as amended, 15 U.S.C. §§ 41-58 (1958), as amended, 15 U.S.C. §§ 41, 45 (Supp. V, 1964).

²² Ch. 323, 38 Stat. 730 (1914) (codified as amended in scattered sections of 15, 18, 29 U.S.C.).

²³ See *Hudson Distributions, Inc. v. Upjohn Co.*, 377 U.S. 386 (1964).

* Associate Professor of Law, Georgetown University Law Center.

¹ SILVER, *MISSISSIPPI: THE CLOSED SOCIETY* ix (1964) [hereinafter cited as SILVER].

federal system in this country, which still permits differences between a state and nation so vast as to lead to the brink of armed federal-state conflict.

The closed society which Dr. Silver describes in detail in the case of Mississippi is the kind of society Judge Learned Hand feared on at least two occasions when he spoke of the limitations on the powers of the judiciary and of the law to channel the deepest currents of our society. In a speech in 1942, on the occasion of the 250th anniversary of the founding of the Supreme Judicial Court of Massachusetts, he called an independent judiciary the "counsels of moderation," and warned, with respect to its power:

but this much I think I do know—that a society so riven that the spirit of moderation is gone, no court *can* save; that a society where that spirit flourishes, no court *need* save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish.²

And in speaking about the spirit of liberty in 1944, in the midst of war, to an audience which included a large number of newly sworn citizens, Judge Hand spoke of the limits of the power of law to shape society in these terms:

I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women, when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it.³

For the most part the spirit of moderation and the spirit of liberty died in Mississippi in the period covered by Dr. Silver's book, with the consequences Judge Hand foretold. How did this happen?

It was first, as told by Dr. Silver, a matter of history—the driving urge for white supremacy which followed the Civil War, achieved by violence in 1875, secured by fear and ballot box corruption for the next fifteen years, institutionalized by law in the Constitution of 1890, and maintained since as an article of faith in "the establishment of orthodoxy" in Mississippi politics. The history necessarily omits almost completely the breaks in the pattern, from the national statesmanship of Lucius Quintus Cincinnatus Lamar following the Civil War to the attempts at enlightened leadership by Governor J. P. Coleman and Congressman Frank Smith in the 1950's.

² DILLARD, *THE SPIRIT OF LIBERTY, PAPERS AND ADDRESSES OF LEARNED HAND* 125 (1952).

³ *Id.* at 144.

Succeeding chapters, entitled "The Voices of Militancy" and "The Voices of Acquiescence," describe the climate of thought in the state. On the one hand, militancy found expression in the inexorable growth of the Citizens Council and the ceaseless pounding on the race issue and on Mississippi's infallibility by most of the Mississippi press. One result—astonishing to lawyers not acquainted with Mississippi—is the growth of the myth that federal law bows in Mississippi to the doctrines of state law.⁴ Meanwhile, on the other hand, acquiescence was evidenced by acceptance of the churches, indoctrination in the schools, silence in the face of suppression of protest, and an exodus from the state of many of the best of her young people.⁵

There is some pressure from the militant right, and some support for it in the press, in all states. There is also inertia, a prevalent desire to conform, and an unwillingness to cause trouble with any group with strong notions about society. The politics of race and the closed society in Mississippi, however, pass beyond usual experience. They led to a system under which the oppression of the Negro, of which Dr. Silver gives only a few examples,⁶ became completely accepted. The failure of national law and policy to tolerate such oppression finally erupted into violence in "the great confrontation" at Oxford, an event to which Dr. Silver was a personal witness and which he sets forth in some detail.⁷ One of its most extraordinary aspects, as the book makes clear, was not what happened but the massive self-aimed propaganda in film and pamphlet which followed, designed to prove that Mississippi was right, and the whole world wrong, throughout the entire occurrence.

This book was based mainly on a speech given in Asheville, North Carolina in November 1963 to the Southern Historical Society. Dr. Silver has included the text of a number of letters he wrote between September 28, 1962, and November 16, 1963, mostly to his son and daughter. They contain some of the personal efforts he made to prevent the rewriting of history which started in Mississippi before the shooting at Oxford had stopped.⁸ More importantly, they consistently reflect the

⁴ SILVER 49-52.

⁵ *Id.* at 81-82.

⁶ *Id.* at 83-106.

⁷ *Id.* at 107-33.

⁸ *Id.* at 159-243; see especially Letters From James W. Silver to his daughter Betty Silver, Oct. 2, 1962, *id.* at 162-67; Oct. 7, 1962, *id.* at 169-71; Letter From James W. Silver to Arthur Schlesinger, Jr., Oct. 10, 1962, *id.* at 171-72; Letter From James W. Silver to the Memphis Commercial Appeal, Oct. 31, 1962, *id.* at 175-76; Letters From James W.

often angry, almost always frustrated attempts to establish the truth by a Mississippian who refuses to give up on his fellow citizens. The last letter is to the editor of the Jackson *Clarion-Ledger*, which reported the Asheville speech as an attack on Mississippi, but reported it in such a manner as to make it impossible for anyone to tell what was in the speech. Dr. Silver pointed out in his letter to the editor that copies of his speech were available "just in case anyone in Mississippi would like to find out what it is that has been so roundly condemned," and concluded by saying: "And, at the risk of seeming contentious, I meekly suggest that the editor, the congressman, and the governor might profit from a reading of the document, maybe on their way to my funeral."⁹

During early September of this year, peaceful desegregation came to schools in Biloxi, Jackson and Carthage, Mississippi. I am sure that this was at least in part the consequence of some persons in Mississippi having profited from the reading of Dr. Silver's book. It is a matter of regret that his book comes a little too late (although his arguments with others in Mississippi did not) to meet the need expressed by his friend, William Faulkner, in 1955:

We speak now against the day when our Southern people who will resist to the last these inevitable changes in social relations, will, when they have been forced to accept what they at one time might have accepted with dignity and goodwill, will say, "Why didn't someone tell us this before? Tell us this in time!"¹⁰

BURKE MARSHALL*

Silver to the Jackson *Clarion-Ledger*, Nov. 29, 1962, *id.* at 188, and Dec. 10, 1962, *id.* at 189.

⁹ *Id.* at 243.

¹⁰ SMITH, CONGRESSMAN FROM MISSISSIPPI 332 (1964).

* Assistant Attorney General, Civil Rights Division, United States Department of Justice.