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Book Review of The New Industrial Order:
Concentration Regulation and Public Policy and
Property, Markets, and Government Intervention:
A Textbook in Microeconomic Theory and Its
Current Application

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BOOK REVIEW

THE NEW INDUSTRIAL ORDER: CONCENTRATION REGULATION AND PUBLIC POLICY. By Samuel R. Reid. New York: McGraw-Hill Book Company, 1976. Pp. xv, 282. \$9.95.

PROPERTY, MARKETS, AND GOVERNMENT INTERVENTION: A TEXT-BOOK IN MICROECONOMIC THEORY AND ITS CURRENT APPLICATIONS. By Daniel Orr. Pacific Palisades: Goodyear Publishing Company, Inc., 1976. Pp. xiii, 398. \$11.95.

Economics propels itself into the confines of legal thought more than any other discipline. Because so much of our consciousness is committed to the condition of our existence, the work of legal institutions is usually intertwined with our economic environment. Therefore, while the two disciplines have developed divergent theoretical instincts and methods, they share a materialist common denominator. Lawyers have a practical incentive to understand economics. Legal institutions revolve around an economic view of the world which may be very archaic and unsophisticated. Legal theory can be enhanced by support from economics, but cooperation and understanding between the two disciplines is not commensurate with their interrelationship. More effort must be made to facilitate communication between economists and attorneys.¹

The legal community should aggressively seek this exchange: lawyers armed with a basic understanding of economics will be more valuable to clients and to society. This has been recognized in such areas as antitrust and government regulation,² and recently in other fields of law.³ For this reason, the books that Reid and Orr have written will be worth any lawyer's time.

¹ Bok, *Section 7 of the Clayton Act and the Merging of Law and Economics*, 74 HARV. L. REV. 226 (1960). See Baumol, *Reasonable Rules for Rate Regulation: Plausible Policies for an Imperfect World* in THE CRISIS OF THE REGULATORY COMMISSIONS 187, 188 (P. MacAvoy ed. 1970).

² Any of the modern texts on antitrust or trade regulation contain interspersed discussions of economics. See, e.g., D. BOIS AND P. VERKUIL, PUBLIC CONTROL OF BUSINESS (1977); T. MORGAN, ECONOMIC REGULATION OF BUSINESS (1976); A.D. NEALE, ANTITRUST LAWS OF THE USA (1970); R. POSNER, ANTITRUST: CASES, ECONOMIC NOTES AND OTHER MATERIALS (1974); L. SULLIVAN, ANTITRUST (1977).

³ R. POSNER, ECONOMIC ANALYSIS OF LAW (1972).

The area of economics most useful to lawyers is microeconomics or, more narrowly, industrial organization economics. Both books fall into this category, but they differ substantially in content. The Reid book presents factual information about the performances of our basic economic institutions, whereas the Orr book teaches background microeconomic theory to aid in understanding the implications of this performance. Yet, they both stay comfortably close to situations non-economists can identify with. This tangibility should encourage lawyers to study their content.

The Reid book will be a helpful, but pessimistic, guide to economic performance information. In many ways it is a bibliography: it summarizes many of the studies which attempt to document the breakdown of our economic structure. Despite the pretentious title, it is not a groundbreaking work. It does not expound on a "new industrial order," but rather it recapitulates problems and remedies recognized for generations. Indeed, the author advocates both implicitly and explicitly renewed attention to "traditional economic concepts."⁴ This work is valuable as a concise reference. The problems Reid emphasizes stay with us for generations and change only, it seems, for the worse. Very few authors can create new direction for fashionable thinking, but the persistence of our economic problems indicates that ready availability of well-established information may be more important to improving conditions than fashionable new theories would be.

Reid's theme is the horrors of increased economic concentration. The author blames a wide variety of the ills of our economic performance on this concentration and repeatedly bemoans the mergers and acquisitions which increase this concentration. Relying on his earlier study of the merger movement,⁵ he provides us with many references to economic indictments of the consolidation of economic power.⁶ Given the author's bias, this information will be of great practical utility to

⁴ S.R. REID, *THE NEW INDUSTRIAL ORDER: CONCENTRATION REGULATION AND PUBLIC POLICY* 7 (1976).

⁵ S.R. REID, *MERGERS, MANAGERS, AND THE ECONOMY* (1968).

⁶ Readers should not take Reid's conclusions with quite the irrefutable force with which they are presented. See Horvitz and Shull, *The Bank Merger Act a Decade After: Reply to Reid*, 19 ANT. BULL. 321 (1974).

plaintiffs' antitrust lawyers, challengers of certain regulatory actions, and those advocating vigorous antimerger policy; yet the book is also worthwhile for those who wish merely to understand why so many take a pessimistic view of our economic future.

The author references studies which show how economic concentration adversely affects our everyday existence. As investors, for example, we should be impressed by numerous demonstrations of the adverse impact of mergers on earnings by shareholders. The author shows that the impetus for mergers is the advantage which accrues to managers and corporate officers rather than to the corporate entity itself.⁷ The author also shows other ways in which the adverse consequences of concentration may touch us directly. He notes, for example, that the consolidation of industries decreases demand for labor.⁸ Further, and of interest to law review readers, the author describes how this decrease in labor demand includes attorneys, especially local attorneys.⁹

The author claims that the theoretically impossible occurrence of inflation combined with decreased demand and increased unemployment is the result of the increase in concentration.¹⁰ This analysis indicates the relationship industrial organization study may have to finding solutions to economy-wide problems.¹¹ In particular, we see that the merger movement heats up the economy without increasing industrial output. The result of this industrial organization trend is the aggregate macro-impact known as "stagflation."¹²

⁷ REID, *supra* note 4, at 102-03. The disparate interest of managers (technocrats) from shareholders and the corporation is discussed in depth by J.K. Galbraith in *THE NEW INDUSTRIAL STATE* (1967).

⁸ REID, *supra* note 4, at 237.

⁹ *Id.* at 247.

¹⁰ *Id.* at 251-55.

¹¹ Industrial organization economics has much to say about the link between structural bottlenecks within markets leading to seemingly unmanageable macroeconomics, or economy-wide, problems and about the economists' forecasting failures. See W. F. Mueller, *Industrial Concentration: An Important Inflationary Force?* in *INDUSTRIAL CONCENTRATION: THE NEW LEARNING* 280-306 (H.J. Goldschmid, H.M. Mann, & J.F. Weston eds. 1974) and authorities cited therein.

¹² "Stagflation," the occurrence of stagnation and inflation is, in simple terms, the result of mergers which cause an increased transfer of money without producing anything except an increased demand for money.

In addition, the impact of increased concentration transcends these specific short-run effects. Reid provides us with ample scholarship indicating that increased concentration has resulted in a substantial deterioration of our competitive market structure. Our economy depends on the automatic regulatory devices of the market. It has long been recognized that high concentration of economic power inhibits the working of the market mechanism. While the local or immediate impact of this breakdown receives a significant amount of attention, the subtle impact, though less noticeable, is more frightening because it may result in the destruction of our economic culture. Nor is the threat limited to the economic environment; the consolidation of economic power also threatens our political institutions.¹³

These horrifying prospects have been recognized since economic theorists first began to understand how a market economy works. What is now becoming general knowledge, and what Reid makes abundantly clear, is that every remedy is absorbed by the seemingly inexorable consolidation movement. He notes that each new major piece of anti-consolidation legislation is followed by greatly increased merger activity (which is apparently followed by inflation/depression).¹⁴ This cycle raises doubts as to the long-run impact of the recently proposed antitrust laws or any other traditional antitrust remedy. Perhaps we need an entirely new direction in our legal/economic remedial approaches.

Reid cites numerous active proposals for reforming anti-trust laws, including techniques for stopping or reversing concentration.¹⁵ Yet, one of the major problems in microeconomics, ignored by Reid and many industrial organization reformers, is the poor quality of the data.¹⁶ Perhaps previous solutions have had negative effects because the first step of reform, se-

¹³ See J.S. BAIN, *INDUSTRIAL ORGANIZATION* 90-92 (2d ed. 1968).

¹⁴ REID, *supra* note 4, at 70.

¹⁵ *Id.* at 264-76. Although receptive to those proposals, he has previously noted that the economic environment provides a much better deterrent than legal sanctions. *Id.* at 148, 157. He prefers solutions aimed in this direction. *Id.* at 273-74.

¹⁶ A Federal Trade Commission study shows, as it could through its special access, the deficiencies in the data upon which government economists draw their conclusions. *STAFF REPORT TO THE FEDERAL TRADE COMMISSION, THE QUALITY OF DATA AS A FACTOR IN ANALYSES OF STRUCTURE-PERFORMANCE RELATIONSHIPS* (1971).

curing accurate information, has not been sufficiently emphasized.¹⁷ If so, one of the most important developments is the tacit authorization of the "line-of-business" reporting function in the Federal Trade Commission.¹⁸ Unfortunately, until recently, administrative timidity and judicial interference have disarmed this program.¹⁹ Hopefully the program will be operational soon and will be used to formulate effective regulation of the economy. Accurate information must precede remedial action.

No doubt anyone touched by Reid's pessimistic economic conclusions will support any effort to reverse the trend documented by the studies compiled in this book. This enlightening work deserves the close attention of the entire legal community. Those who wish to do something will find a valuable beginning reference source in Reid's book.

Orr's book, on the other hand, is much broader and is a more objectively theoretical survey of market economics. Although it is labeled a textbook, its treatment of economic theories is fashioned in a way that should appeal to lawyers. The author manages to present the theories so that they relate to real-world situations. This is accomplished by effective use of realistic examples, sometimes cast as "simple fables." He demonstrates the concept of interest, for example, by our own preference for a dollar now rather than a year from now: A dollar is worth more to us if we receive it today than if we know we

¹⁷ An Antitrust Task Force, Reid notes, did propose improvements in "the quality and availability of economic and financial data relevant to the formulation of anti-trust policy." REID, *supra* note 4, at 269.

¹⁸ "Line-of-business" reporting requires certain corporations to file business data broken down according to industry or the various markets in which they sell. It is anticipated that this will provide more accurate and useful economic data. 44 U.S.C. §§ 3502 and 3512 did not actually authorize "line-of-business" reporting, but did transfer approval power to the General Accounting Office, an arm of Congress, when businessmen had been able to stop the program through the Office of Management and Budget, an executive office. Though the Federal Trade Commission did not lack authority before, a strong mandate for "line-of-business" reports can be found in the history of the legislation.

¹⁹ Hopefully the appointment of activist Michael Pertschuk to the chairmanship of the Commission will revitalize the agency. Any judicial impediment should be removed by the excellent and comprehensive opinion in *In re* FTC Corporate Patterns Report, Master File Misc. 76-0126 and *In re* FTC Line of Business Report, Master File Misc. 76-0127 (D.D.C. April 12, 1977).

will not receive it for a year.²⁰ His stories and examples ring true because, stripped of their hypothetical presentation, they are realistic and understandable.²¹

Orr also gains our attention because we are forced to conceptualize common problems in terms of economic theories. For example, the operation of the market is introduced in terms of its effect on the loss of scenic environment²² and its relationship to racial problems.²³ By focusing the discussion of theories on their relationship to current social issues, Orr keeps us interested in those theories. In short, this work appears to be a very useful self-teaching tool for one with virtually no economic training.

Despite its general simplicity, however, the book does contain some advanced material. These sections should not immediately repel those of us who have long since developed the habit of avoiding anything which smacks of mathematics. The author has made a conscious effort to insulate the unsophisticated from this confusion. The book does include technical sections for those who want more depth, but these are carefully marked so they are easily bypassed by those who will find fog rather than sunlight.

This book is a teaching tool and not an authority. A lawyer looking for authority to cite on industrial organization should look to Scherer,²⁴ which has somewhat displaced Bain's foundation piece²⁵ as the basic authority in the area. Scherer's work assumes that the reader is more knowledgeable; hence, while comprehensible to the uninitiated, he does not present the

²⁰ D. ORR, *PROPERTY, MARKETS, AND GOVERNMENT INTERVENTION: A TEXTBOOK IN MICROECONOMIC THEORY AND ITS CURRENT APPLICATIONS* 175 (1976).

²¹ For example, the author presents a convict fable, *id.* at 24, which must be derived from a classic study of the evolution of a market economy in a prisoner-of-war camp. Radford, *The Economic Organization of a P.O.W. Camp*, XII *ECONOMICA* 189-201 (Nov. 1945) (New series).

²² ORR, *supra* note 20, at 14.

²³ *Id.* at 15-16.

²⁴ F.M. SCHERER, *INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE* (1970). See also W.G. SHEPHERD, *MARKET POWER AND ECONOMIC WELFARE* (1970); W.G. SHEPHERD, *THE TREATMENT OF MARKET POWER: ANTITRUST, REGULATION, AND PUBLIC ENTERPRISE* (1975).

²⁵ J.S. BAIN, *supra* note 13. See also, J.S. BAIN, *BARRIERS TO NEW COMPETITION* (1956) (a combination text and empirical work that first tested interrelationships between concentration and barriers to entry and their joint effects on performance).

material from quite as elementary a starting point. More importantly, Scherer does not pay such consistent attention to the lack of formal economic training of those outside the discipline.

These two books share an aggressively practical look into a useful area of economics. Taken together they offer a concise education in industrial organization economics, an education which is increasingly important in areas such as corporation law or any of the various substantive areas of administrative law.

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