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Antitrust and Trade Regulation Today: 1969 by John C. Scott

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values and priorities—I think that there is a real danger that those who now hold the reins of power will be unwilling to give them up. It is at that point that the professed commitment of the present “Establishment” to democratic principles and “working within the system” will be put to the test.

In *Points of Rebellion* Justice William O. Douglas has accurately portrayed American society as it exists today and has carefully analyzed the problem of change, dissent and repression. He has sounded a warning for the future. There is the real danger that the confrontation between the dissenters and the “Establishment” will produce violence, and if our belief is in a peaceful, democratic society in which fundamental social change may take place within the framework of the law, it matters not whether that violence reflects the frustration of the dissenters or the repression of the “Establishment.”

It is with this perspective that the thoughtful reader will approach *Points of Rebellion*.

Robert Allen Sedler
Professor of Law
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ANTITRUST AND TRADE REGULATION TODAY: 1969. By John C. Scott. The Bureau of National Affairs, Inc., Washington, D.C. Pp. 204. \$12.50.

The Bureau of National Affairs' (hereinafter BNA) antitrust publications are most familiar to practitioners devoted to that cloistered and somewhat compulsive practice of following developments in the specialized corner of the antitrust law. BNA's weekly *Antitrust & Trade Regulation Report* no doubt provides nighttime reading for the bulk of the antitrust bar. Every issue arrived with ominous precision on my desk when I was a novice in a large Eastern law firm. Somewhat the same as one participating in devotions each night as a member of some holy order, I would carry each copy in my brief case until the stack (and my guilt) became so heavy I would have to set aside two or three hours to correct my backsliding.

This book is a collection of part of those interminable weekly reports. In addition to a quite thorough report of federal and state antitrust cases, arguments before the Supreme Court on leading cases, and relevant legislative proposals, BNA also includes a monthly article analyzing recent developments in the context of past and present economic and legal trends. It adds to the report a valuable

bit of interpretation and argumentation and augments what would otherwise be no more—or less—than a fine resource tool.

In book form, however, these forty-three articles bring several questions into focus. First, one must ask, I suppose, for whom is this publication intended? As a general reprint of articles religiously collected by antitrust fanatics (the walls of many an office are papered with weekly reports), who could possibly want more of the same? The principal market, I am told, is that body of general practitioners and businessmen who seek an antitrust primer, rather than an exhaustive research tool.

Yet the questions discussed in these articles are highly technical. No law school charged with instructing budding young antitrust lawyers on their vows would begin with such sophisticated topics as "Bathtub Conspirators," "Private-label Price Differentials," and "In Pari Delicto." Those topics, nonetheless, constitute the diet of general practitioners or businessmen who turn to this book.

A more fundamental problem emerges in the selection process used by BNA for such topics, and extends to initial publications in the weekly service as well as to the reprints in this book. Topics are generated in closed monthly meetings of BNA editors and an advisory board of distinguished antitrust authorities. Once a topic is selected, a draft article is generally submitted to a review committee of advisory board members. Recently, this review has been conducted by the entire board at monthly meetings.

Curiously, however, the BNA advisory board consists solely of members of corporate law departments, private practitioners, and law professors, while government officials of the antitrust prosecutory agencies (the Department of Justice and the Federal Trade Commission) are excluded from BNA membership and attendance at these closed monthly sessions.

For any service which professes to furnish the legal and financial communities with "both summary and comprehensive treatment of all significant developments in the field of antitrust and trade regulation," this exclusive gathering of private practitioners seems a bit ill-advised. While having "the D.A." listening in might foster some new tack for antitrust enforcement or in some way limit the matter discussed, it would seem that no service advising the bar on newly emerging antitrust pitfalls can claim to be complete unless the current views of prosecution are included in the analytical process.

Although several of the members serving on the antitrust board are eminent former government antitrust practitioners, this area of the law takes many theoretical twists and turns in each administration.

Subject to restrictions on both sides to maintain confidentiality of their client's affairs, inclusion of government attorneys in BNA sessions would seem to provide a useful vehicle to explore the trends that prosecution agencies follow and might reduce speculation about the latest directions in antitrust prosecution. This additional input could provide an improved source for business awareness of the current focus of antitrust prosecutions.

This kind of prophylactic approach to the antitrust laws serves well the interests of the public and the financial community. Litigation is time-consuming and expensive for all concerned and consent decrees or, in some instances, criminal sanctions, are not generally attractive to a client. Good counsel on a continuing basis can aid business in avoiding these hazards, and good counsel depends upon a full exposure to current views of prosecution.

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THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE? By Charles O. Galvin and Boris I. Bittker. Washington, D.C. American Enterprise Institute for Public Policy Research, 1969. Pp. 184.

Of one thing I am certain. The monstrous complexity of the present system in this country and the inequities wrought on upper and lower income groups alike will bring the whole system crashing down around us unless we think seriously of innovative and far-reaching changes.

The subject of this dire warning is the present federal income taxation system. The speaker is Charles O. Galvin, Dean, School of Law, Southern Methodist University. If the words and fears expressed sound familiar, it is because they somewhat resemble the words of former Secretary of the Treasury Joseph W. Barr spoken near the close of the Johnson Administration, when he warned Congress of a possible taxpayer's revolt.

* The opinions and views expressed herein are those of the author and do not represent those of the Department of Justice or the President's Advisory Council on Executive Organization.