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BOOK REVIEWS

Price Control Under Fair Trade Legislation. By Ewald T. Grether. New York: Oxford University Press, 1939. Pp. x, 517. \$5.00.

Fair Trade acts have been written into the statute books of nearly all the states with a rush. The organized druggists of California started things off in 1931 and today only a handful of states have not fallen into line. In this rush a good deal was taken for granted in the legislative halls and elsewhere. It was supposed that economic salvation for the little fellow lay just around the corner of a Fair Trade act. There were some constitutional doubts but when these were removed by the Supreme Court of the United States late in 1936 the road to prosperity seemed to be clear and straight. There were other statutes, too, that found their way into the books in the wake of the Fair Trade acts and under a like sponsorship and motivation. These were the Unfair Practices acts but constitutional doubts still block the road to their full and fair trial.

Much rhetoric has been expended over all these laws and a good many lawyers have written about them but never before has anyone tried to translate the phrases of the statutes into the actual forces they became, or did not become, in the market places and to appraise them in terms of their economic worth. The author of this book is Professor of Economics at the University of California and since these laws have been put to greater use in their state of origin, if only because they have been on the books there longer than in any other state, he did well in concentrating on the market places there. It was a big undertaking. Professor Grether was able to secure a force of workers recruited from relief agencies to make field investigations in the retail trades. The results of this kind of work are reflected in many parts of the book.

In spite of what has been said, the author presents this book with an apology for its "informational and statistical incompleteness" (p. vii). This apology does not alter the fact that it stands as by far the most comprehensive and careful study that has yet appeared on the Fair Trade laws in this country. The first half is packed with both information and statistics and the second half, which is devoted to more general discussions, gains point and meaning when set against this background.

In the first half there is a brief review of the history of these laws. This is followed by a detailed study of experience in California under them. We are taken into the drug trade in one chapter and shown how the organized druggists were able to induce drug manufacturers to fall

into line with fair trade contracts. If educational efforts and persuasion failed there was always the organized pressure of refusal to cooperate with manufacturers who would not sign up, while at the same time the full force of sales pressure was bestowed upon products under contracts. The militant druggists of California have set an example that may easily spread into other states. Here is collective bargaining of a new sort or perhaps it is the familiar boycott set to a new task. The lawyer will stop at this point and ask some questions.

When we turn from the druggists to the grocers in the next chapter the story is a very different one. We find a trade group largely ignorant of the very existence of the law, a great complexity in distributive channels, and little effective organization as well as many other more fundamental conditions that work against the use of the law in this trade. In chapters that follow, the retail trades are passed in review and as to each the universals that make up the statutes are matched against the particulars that make up these various and varied marketing structures each with its own peculiar background of experience, habit, outlook, and practices. For example, in the sale of alcoholic beverages it is found that there are great differences between the liquor, wine, and beer trades. The Fair Trade Act is important in the first but in the other two the Unfair Practices Act is put to far greater use. It was found that the book trade lends itself to resale price control but by contrast there is little that can be done in the confectionary trade. Why is it that price control statutes have been irrelevant or almost so in the sale of dry goods, automobiles and accessories, gasoline, furniture, jewelry, and many other items? What is there about the drug trade that makes them important there or in the stationery and tobacco trades? These laws have been written in universals. The retail trade is carried on in particulars. A study of these particulars reveals so many diversities that it might almost be said to be a lucky circumstance if the universals of the statutes happen to fit the particulars of any given trade. If law-makers seek some idea as to where their laws may go before they set them on their courses they would do well to read this book.

The second half of the book includes an excellent chapter on leaders and loss leaders. This is followed by a chapter that analyzes the play of interests in the retail field with particular discussions of the influences exerted by the smaller independents, the department stores, mail order houses, and chain stores. Professor Grether is not at all sure that in the long run the expectations of the independents will be realized and many who have supported these laws as anti-chain store measures will do well to ponder his statement that "probably in the long run the greatest increment of advantage will accrue to the more powerful well-

entrenched chain store systems." (p. 251) Here as elsewhere in the book his conclusions are expressed with due regard for competing considerations that may upset his calculations. A footnote (p. 294) suggests that other publications of the author have been used and abused in the heat of vocal battle over these laws and he is anxious that his own point of view be presented clearly. The reviewer might take note of this same warning and stop right here for if any one point stands out throughout this book it is that the author has canvassed all possible points and points of view so painstakingly that no simple conclusions may be reached.

The chapter on the interests of manufacturers and distributors is intensely interesting for in it the author seeks to explain that in recent years retailers and wholesalers have largely displaced manufacturers as the active sponsors of these laws. In another chapter the effects of these laws upon consumers are discussed. Professor Grether finds that consumers who patronize lower price, limited service firms must pay higher prices than they did before (p. 298) and he is not at all convinced that a tenable claim is made when it is said that Fair Trade laws have caused drug manufacturers to lower their prices (pp. 308-309).

The important part played by organized trade groups in the enforcement of these laws is discussed in another chapter. In most trades government plays but a minor part in this work. There are still many difficulties. Economic sanctions employed by organized trade groups are powerful weapons. They may be employed to write a law merchant in the trade association office that does not conform to the objectives of the statutes. The lawyer interested in this problem will regret that Professor Grether has not developed this more fully than he has but then the answer may be that these laws are still too fresh on the books.

The impatient reader may demand an answer to the direct question, is the author in favor of these laws? A simple yes or no will not do justice to the author or to his methods. The answer seems to be no, but this book is no brief in support of one answer. Professor Grether seeks understanding and throughout his book it is plain that the slogans that have beset these laws play no part in the attainment of that goal.

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An Economic Constitution for Democracy. By George Soule. New Haven: Yale University Press, 1939. Pp. vi, 101. \$1.50.

For centuries it has been an accepted truth that a principal function of a legal system is to provide stability to the society for which it is designed. Somewhat more recently it has become clear that another main prop of a stable society is the satisfaction of the bulk of the people with that society's economic functioning.

Yale University's Storrs Lectures on Jurisprudence have in the past been brilliant contributions to the philosophical development of the law. Cardozo's *Nature of the Judicial Process*, Pound's *Introduction to the Philosophy of Law*, and Corwin's *Twilight of the Supreme Court* are witnesses to the tradition that these lectures should be compact distillations of the lecturer's intellectual convictions upon the fundamental nature of law and the legal process.

George Soule's volume breaks with this tradition. It is concerned neither with the nature of law nor with the legal process. Instead, it is concerned with the economic ills which threaten the stability of American society. The first of the three lectures, "The Perils of Democracy", properly emphasizes that the menace to this country and its way of life comes not so much from foreign "devils" as from internal trends toward totalitarianism activated by desperation over this democracy's inability to correct complex economic maladjustments. The second lecture, "The Legacy of the New Deal", concludes that the Roosevelt Administration has provided enough money and has put much of it in circulation through benefit payments, loans, and construction projects. But unemployment remains at a tragically high level largely because private enterprise has not been stimulated to the point where new investment will flow into the industrial and commercial fields. The final lecture, "The New Economic Constitution", argues neither for an immediate policy of "less government in business", nor for the Administration's view that borrowing and spending are emergency policies to be abandoned when private enterprise takes up the slack. Soule urges instead the permanent adoption of a spending program through which the government could give direction to the investment of new capital and bring pressure for lower prices and higher quality in goods capable of mass distribution. This may mean government ownership and operation of some segments of our economy; in others it will mean merely extensive government regulation of private enterprise.

From this summary of the volume it should be clear that in analyzing the problem of our economy Soule threshes much old straw, and that in prescribing remedies he contributes little that is constructive.

The book is not in the tradition of Cardozo, Pound, and Corwin as to solid content, nor does it even do justice to its author, whose *Coming American Revolution* was a very substantial contribution to our literature on public affairs.

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