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# Readings

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## **“Ecorealism” Exposed**

**A Moment on the Earth:  
The Coming Age of Environmental Optimism**  
by Gregg Easterbrook  
(Viking, 1995) 745 pp.

**Reviewed by Richard Gordon**

Despite failures that ought to have been fatal, *A Moment on the Earth* has garnered wide attention from those actively concerned with environmental issues. The problems with the book are legion: nothing argued is new or even better presented; the organization and writing are unsatisfactory; much of the analysis is faulty; and the documentation is deplorable.

The interest seems to have arisen mainly due to Easterbrook's credentials as a practicing environmental journalist. He has systematized the growing willingness among journalists to break with their prior uncritical approach to environmentalist doomcrying. To his credit, Easterbrook explicitly objects to Al Gore's call for silencing dissent and uses Gore throughout as a prime example of apocalypticism. Easterbrook's nominal unifying principle is that more skepticism is desirable.

Easterbrook's argument is that although environmental problems deserve attention, the environmental movement has exaggerated the threats and ignored evidence of improvement. His discontent causes him to adopt and incessantly employ the pejoratively intended (and irritating) shorthand “enviros” to describe the leading environmental organizations and their admirers. He proposes—and overuses—an equally infelicitous

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alternative phrase, “ecorealism,” that seems to mean that most environmental initiatives can be justified by more moderate arguments. Given the mass, range, and defects of the book, any review of reasonable length must be selective.

Easterbrook's critique begins with an overview of environmentalism from a global perspective. He then turns to a much longer (almost 500-page) survey of many specific environmental issues. The overview section is a shorter, more devastating criticism, but it is also more speculative than the survey of specific issues.

In essence, the overview argument is that human impacts on the environment are minor, easily correctable influences on a world affected by far more powerful forces. That is a more penetrating criticism than typically appears in works expressing skepticism about environmentalism. Easterbrook notes that mankind's effects on nature long predate industrialization or the white colonization of America, but still have had only minor impacts. We are then reminded of the vast, often highly destructive changes that occur naturally and the recuperative power of natural systems.

The points Easterbrook makes are standard ones. He is simply reminding us that environmentalism ignores much basic science and history. As was typical throughout, Easterbrook was worst with things with which I am familiar. For example, Easterbrook inserts a feeble discussion of natural law; in it, he contrasts the Hobbesian view of brutish nature with what he takes to be the natural-law vision: that society is corrupt and nature benign. Apparently, Easterbrook cannot distinguish among Locke, Hume, and Rousseau.

The heading given that section illustrates the silly, heavy-handed devices that mar Easterbrook's exposition. The title is “How Clarence Thomas Confused Environmental Debate.” It turns out that Thomas only mentioned natural law as a general principle; Easterbrook is the one who

drew environmental morals. The device of tenuous links to famous nonenvironmentalists was similarly used in two other places. Every other effort by Easterbrook to enliven the exposition in the text as well as the subtitles is inept.

### **Erratically Effective**

The review of specific issues is at its best when it focuses on limited problems and shows the drawbacks of the standard hysteria-ridden environmentalist arguments on the issues. Twenty-four discussions are presented in alphabetical order, twisted by strategic insertions (e.g., "case study" before "spotted owl") or deletions (e.g., of "toxic" in dealing with chemicals). Here chapters are subdivided into (1) those that focus on well-defined issues, (2) those that review overly broad issues, and (3) those that seem perfunctory. In the first category are, in Easterbrook's order of presentation, chapters on acid rain, spotted owls, toxic chemicals, global warming, energy, forests, population, nuclear power, ozone and radon, endangered species, the Third World, and toxic wastes. The diffuse chapters are all on overly broad topics: air pollution, economics, enviros, politics, and water pollution. The most perfunctory treatments are of clean tech, global cooling, farms, genes, and land. My comments here will stress the energy and economic issues that are my specialty.

The chapters in this grouping vary greatly in acceptability. Perhaps the most interesting was the Third World chapter, in which Easterbrook demonstrates that the primitive existence of the Third World involves enduring flagrant environmental damages that all industrialized countries long ago overcame. Contaminated water, uncollected garbage, fumes from burning fuels, and unsound farming and forestry management are among the plights Easterbrook identifies. He rightfully faults environmentalists for concentrating on the less clear-cut problems that arise in industrialized economies and for ill-advised opposition to hydroelectric projects in the Third World.

The chapters on acid rain, endangered species, global warming, ozone and radon, and toxics all work reasonably well. In particular, Easterbrook admits the following: that acid rain may be relatively innocuous; neither the existence nor the impact of global warming is well established; wildlife disappearance is exaggerated and the spotted owl is not a unique species; the dangers

of toxic material use and disposal are overstated; the case for dangerous ozone depletion is defective; and radon is not a serious hazard. His conclusions are all consistent with the vast skeptical literature that has dealt with those issues.

However, problems of detail arise. The treatment of emissions trading under the acid-rain cleanup provisions of the 1990 Clean Air Act Amendments is, even for the low standards of the literature on the act, inept. Easterbrook concentrates on the single sop to market principles in the law. That the tendency toward command-and-control regulation runs rampant in the law is neglected. The acid rain provisions, for example, identify by name which units at specified power plants must effect emission reductions. Here Easterbrook merely echoes the Bush administration and many overly optimistic environmental economists.

Easterbrook is delighted that the price of pollution permits is well below what was predicted before the act. He attributes that to his principle that costs of environmental protection nearly always turn out to be lower than expected. Three paragraphs later he cites as a virtue that the law makes the permits temporary and denies them property-right status. Easterbrook seems oblivious to the possibility that such attenuation of rights, rather than low costs, may have produced the low prices.

The chapters on energy are an annoying mixture of the sensible and the dubious. Easterbrook gets off to a good start by debunking environmentalists' passionate opposition to power dams and government-imposed limitations on offshore oil and gas production. Next comes the currently obligatory denunciation of coal for air pollution, killing workers, and marring the landscape. Then he jumps into an enthusiastic endorsement of the work of Amory Lovins, the indefatigable advocate of energy conservation. Lovins, Easterbrook, and others believing in vast unexploited opportunities for energy conservation do not satisfactorily explain how such unexploited options exist after two decades of governmental exhortation and intimidation. To make matters worse, Easterbrook here does quote two of the many critics of Lovins but concludes—on no discernible basis—that those critiques justify lower but still substantial estimates of the benefits.

Any long-time observer of Lovins knows that his estimates are frail, even for the conservation free-lunch school. Lovins typically tries to drown his critics in an ocean of citations of studies that support his views. What he fails to state is that

those studies are largely speculative works from the army of armchair conservation analysts that was spawned by revived fears of energy exhaustion. Nonsense does not become better through repetition.

Easterbrook correctly notes that, rather than running out of energy, the world will gradually shift towards more abundant sources. He agrees with the optimists that it is likely that the change will be like those of the past in which the rivals took over by lowering costs long before prices of currently used resources began to rise. He uses a series of anecdotes to illustrate how unlikely it is that the transition will occur in the next few decades.

The discussion of nuclear power also indiscriminately mixes valid points with dubious views. Easterbrook notes that nuclear reactors are safer than fossil-fuel-fired ones, and that it is politics rather than technology that is preventing resolution of the waste storage problem. But nowhere does he mention the role of inept regulators in delaying the use of nuclear power; instead he concentrates on the shortcomings of plant operators.

Among the broad discussions, the air and water pollution chapters are too diffuse. The chapters on enviros and politics make valid points—including several made elsewhere in the book—but the one on economics is a disaster. The chapter on enviros credits them with doing good and criticizes some of their excesses, such as the overstatements of Greenpeace and Al Gore, the tendency to want other people to sacrifice, romanticizing the past and the natural order, and being too enmeshed in fundraising.

The political chapter is a series of largely valid vignettes on issues such as: the Delaney Clause; the adaptation environmentalists must undergo when they assume political positions; the "NIMBY" problem; how public relations concerns affect corporate decisionmaking; why he believes that George Bush's environmental policies were sound; the dangers of policymaking during overreaction to apparent disasters; the neglect of scientific uncertainty; the tendency of the government and foundations to support those with gloomy conclusions; and environmentalists' inappropriately protectionist approach to international trade.

The economic chapter is defective in an exasperating fashion. If you read far enough, you discover that Easterbrook understands the basic

economic decision rule that the benefits of a desirable action must exceed the costs. He rebukes environmentalists for resisting efforts to use cost-benefit studies to appraise policy. But earlier in the chapter, Easterbrook shows himself guilty of neglecting cost-benefit analysis.

He begins by observing that because of technical ingenuity, pollution control is much less costly than feared. His argument relies heavily on anecdotal evidence. More critically, he ignores that even at lower than expected levels, the control costs often do not produce sufficient benefits. Easterbrook then asserts that "no important researcher has supported the notion that environmental regulations strangle the economy." He fails to show that any important researcher thought strangulation was likely, and ignores the real criticism: that the benefits of those regulations do not outweigh the costs they impose.

### **Ideological Blinders**

The statement ending the chapter suggests a source of his ideological blinders. In the antepenultimate paragraph, he writes, "Some sentiments of environmentalism spring from intellectual dislike of capitalism. This is not . . . because environmentalists are closet Marxists. It is because most environmentalists are, like me, liberal: And the liberal intellectual tradition carries with it an abiding yearning to stand astride the corpse of capitalism and proclaim the words, 'I told you so!'" The distinction between Marxism and a bias against capitalism is irrelevant and misleading. The key issue here is not the proper label, but the validity of the viewpoint. Moreover, Easterbrook's concept of "liberalism" sounds more like democratic socialism.

The last paragraph of the chapter begins, "Capitalism certainly needs work: I certainly hope that someday it is replaced by a more just and less stressful system of production and distribution." Of course, Easterbrook does not suggest what the alternative might be; again, he chooses to ignore important evidence—namely that which demonstrates man's failure to devise a better system.

Later, Easterbrook extends his vision. After admitting the anti-materialist bias of environmentalism, he adds gratuitous comments about the alleged overstatements of defenders of capitalism and the high incomes of two corporate executives. His first tirade includes the view that

"at best capitalism is a transitional phase between a feudal human past and some future social ordering that combines the productive efficiency of free markets with the equity and community capitalism lacks."

In fairness, his treatment of economics can be sensible. Easterbrook mocks one expositor for attacking the treatment of water as a commodity; this suggests that Easterbrook understands (though he does not explain) the benefits of free trade in water. He also comes close to understanding the advantage of private forest ownership over public ownership.

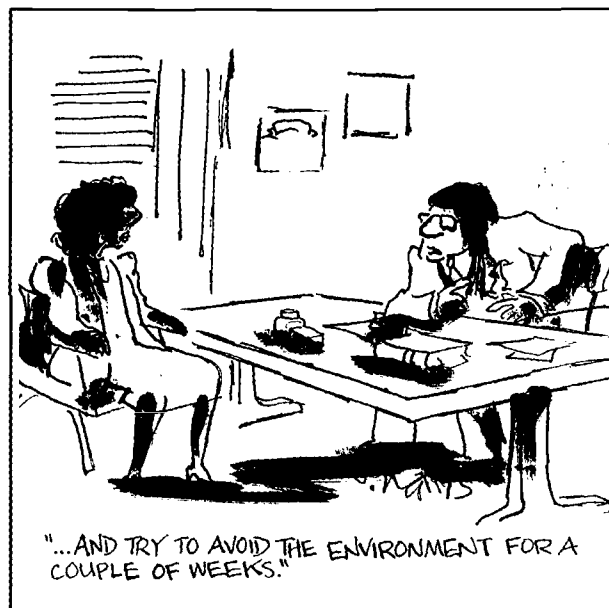
In economic policy analyses, conclusions such as Easterbrook's produce concerns that the substance as well as the form of the regulations may be defective. Modern discussions of regulation have taught the participants to be skeptical of claims that bad results are merely due to inadequate effort. This is not Gregg Easterbrook's world. He clings to support for existing policies. Only rarely, as with the most benign forms of energy, does he suggest reform. More usually, he finds reasons to maintain existing policies. In the starkest example, he demonstrates that the attack on Alar was invalid, but argues that the ban is good because Alar use was unnecessary.

The rationale for such conclusions seems to be that the benefits of the policies are still great enough to justify the costs. Easterbrook relies heavily on evidence that he believes shows that environmental control costs are much more modest than feared. His charges of excess are well documented, but his calls for retention of policies involve inordinate leaps of faith.

Similarly, Easterbrook makes inadequate use of the valuable work of environmental economists such as those associated with *Resources for the Future*. He gives passing praise to the idea of relying more heavily on financial incentives and pressures to promote attainment of environmental goals; but he does not sufficiently recognize that some environmental policies involve costs unlikely to produce commensurate benefits. Thus, he fails to employ the arguments best suited to attain his goal of a realistic environmental policy.

### Unacknowledged Debts

An associated problem is Easterbrook's veiling of his debt to those he terms "right-wing" critics of environmentalism. His critiques echo such cen-



surers, largely because they often are his prime sources. Easterbrook's analysis is familiar to those who have examined the vast skeptical literature on environmentalism. The only thing that makes his book particularly interesting is that he is one of the first writers making such arguments who could not be dismissed as in some way biased.

In fact, he inserts gratuitous attacks on the Right that are at best less substantiated than his attacks on environmentalist exaggerations. The most readily refutable example is the lumping together of Rush Limbaugh, former congressman William Dannemeyer, Elizabeth Whalen (the critic of attacks on dangerous chemicals), and Cato scholar Ronald Bailey as a representative sample of critics.

The misleading impression caused by including a serious writer, Bailey, with the others is accentuated by Easterbrook's gross misrepresentation of Bailey's argument. Bailey is described as believing that "environmentalists are involved in an 'eco-scam' that is a cover for hard-core socialism." Bailey's treatment of the ideological outlook of environmentalists is better characterized as suggesting that anti-capitalist, pro-statist biases disfigure environmentalism.

Easterbrook should have paid more attention to Bailey's main argument. The essence of Bailey's book *Eco-Scam* is that environmentalism is a deliberately limited presentation of a sweeping argument that population growth is depleting

the world's resources. Environmentalists' claims about hunger and mineral supplies have proved totally invalid, so their attention has turned to threats that are more difficult to appraise. Bailey tries to provoke us to take the step that Easterbrook resists: asking whether the new argument has any more substance than the old.

Even worse, however, is Easterbrook's effort to discredit Dixie Lee Ray for "disqualifying error." One of the many sources Ray cited was published by an organization "established by" Lyndon LaRouche. In fact, Ray produced two books that contain far more references than Easterbrook's has, and most of her sources have impeccable credentials. Indeed, many of Ray's sources are those relied upon by Easterbrook to support arguments similar to Ray's. The attack on Ray is gratuitously inserted after several pages of skeptical comments about the ozone issue. As far as I can tell, Easterbrook has added error to his McCarthyism by referring to the wrong Ray book and giving an imprecise name for the organization. The best that can be said in Easterbrook's behalf is that the organization does seem too strident and overly friendly to LaRouche, and that Ray actually cited several items the group published.

Perhaps it was the fear of alienating environmentalists that drove Easterbrook to accentuate his interventionist views and obfuscate his heavy reliance on critics of environmental activism. As he should have expected, he only managed to irritate both sides. The *Wall Street Journal* has cited Easterbrook several times, often summarily expressing the viewpoint stated here. The Environmental Defense Fund has taken the lead in arguing that Easterbrook's book is riddled with errors. Their campaign has involved letters to the editors of leading newspapers and producing a report listing alleged errors by Easterbrook. Predictably enough, the "errors" cited are those that understate environmental threats; this review shows that errors of overstatement were also made. It seems that Easterbrook's book is a mixture of the clearly valid and the dubious.

Easterbrook's approach to citations is bizarre and inadequate. The bibliography and notes are selective. Some important books are cited only in the main text or more rarely in notes. At least three times in the book, Easterbrook inserts remarks that indicate recognition that his references are incomplete. Even the fullest mea culpa, the explanation of the limitations of his bibliography, is unconvincing. He claims only to omit "routine references." What

motivated his choices is unclear, but one effect is to hide the extent of his debt to libertarian writers.

Only those who consider polemic literature on public policy to be light entertainment should bother with *A Moment on the Earth*. The best advice for anyone else is to skip Easterbrook and go directly to those whose substance he tacitly accepts despite his ideological smoke screens.

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## Self-Interest or "Surfboarding"?

### The Causes and Consequences of Antitrust: The Public-Choice Perspective

edited by Fred S. McChesney and  
William F. Shughart II

(University of Chicago Press, 1995) 349 pp.

#### Reviewed by Donald I. Baker

This volume is provocative and occasionally very illuminating. Unfortunately, it also seeks to reach some far-reaching policy conclusions from contestable assumptions, unpersuasive economic correlations, and selective readings of history.

The thesis of the editors (Fred S. McChesney and William F. Shughart II, who authored or coauthored nine of the chapters themselves) is that federal antitrust laws are the creatures of rent-seeking "interest groups [that] purchase protection from the forces of unfettered competition." Thus, "Government antitrust enforcement decisions must be explained in terms of "self-seeking motives . . . attributed to all individuals, in or out of government." As a consequence, "The prevention of welfare losses to consumers, the supposed goal of antitrust policy, does little to explain how the antitrust enforcement agencies actually select cases to bring." In sum, "Antitrust's potential for favoring certain interests over others activates the formation of coalitions to seek wealth transfers through antitrust processes and, moreover, triggers the politically self-interested supply response predicted by the

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public-choice model. In contrast to the naive assumption of the conventional view of antitrust, these favors tend to be supplied not to consumers, but to well-organized pressure groups."

As someone who has spent a large part of his professional life enforcing the antitrust laws, encouraging (and criticizing) the efforts of others to enforce them, and participating in (and criticizing) the congressional process in the antitrust area, I am clearly part of the community that Shughart refers to derisively as "the antitrust industry." As such, I do not have any illusions that antitrust is tidy or error-free activity: the institutions are flawed at key points, and some of the rules are erroneous or too complex to be effective. Yet my firsthand experience of this untidy world gives me a very different vision than that portrayed by the editors and some of the authors.

I can only wish that the editors had had more substantial antitrust enforcement experience of their own and could therefore apply their provocative perspectives to more realistic sets of factual, historical, and economic data. Some of the issues that their volume did not tackle are at least as relevant to their thesis as the covered subjects: those issues include the central role of the courts; use of the private treble damage remedy; state enforcement of federal antitrust laws; federal preemption of anti-competitive state laws; and the political motivation behind the mid-1970s legislation that so vastly strengthened the federal enforcement laws.

In trying to deal with the broad range of issues addressed in the book, we can focus briefly on several critical areas that take up most of the pages: the history of antitrust legislation; enforcement choices and effects; and economic studies on the effects of antitrust policy.

### Historical Selections and Omissions

Part IV, "Public Choice and the Origins of Antitrust," begins with a balanced and thoughtful introduction by William F. Kovacic about the conflicts and debates surrounding antitrust history. The section then provides several essays by a group of scholars that Kovacic accurately labels "the abolitionists." As with the anti-slavery crusaders of the same name, their view of history tends to be simplistic and single-minded.

The history of the Sherman Act is not dealt with directly. Instead, an essay by Donald J.

Boudreaux, Thomas J. DiLorenzo, and Stephen Parker entitled "Antitrust Before the Sherman Act" reviews the enactment of state antitrust legislation during the decade before the passage of the Sherman Act in 1890. The essay emphasizes the experience in Missouri and concludes that "cattlemen, butchers and other rent seekers" sought to enact antitrust laws to block the expansion of larger meat-packing enterprises that were putting downward pressure on their prices.

By contrast, an essay by Robert B. Ekelund, Michael J. McDonald, and Robert D. Tollison on the enactment of the Clayton Act is based on "the hypothesis that restrictions established in the Clayton Act benefitted large incumbent firms and firms in intrastate commerce at the expense of expanding firms." The essay argues that the act's famous "incipiency doctrine provided the means for ex-ante wealth transfers among competing special-interest groups."

A third essay, by George Bittlingmayer, suggests that production expanded during the period in which the antitrust laws were suspended as part of the famous "Blue Eagle" program of the National Industrial Recovery Act. Bittlingmayer seeks to draw some cause-and-effect conclusions between those two facts.

I see the antitrust history of these three periods quite differently. In each instance, there was very broad political ferment and controversy generated by changes that caused pain to economic actors and made citizens feel uncomfortable. The vast changes in the efficient scale of companies in the late 19th century and the dramatic deflation of the early 1930s are cases in point.

There has never been a specific political constituency in favor of general antitrust laws. Such laws were enacted, expanded, or suspended (as in 1933) when a broad sense of public alarm caused politicians to feel that they had to "do something" about the big problem of the day. What politicians actually do in such instances may well be affected or changed by particular interests (as we saw in the labor exemption to the Clayton Act), but statutes as broad as the Sherman Act's Sections 1 and 2 and the Clayton Act's Section 7 simply do not get created by narrow interest groups.

My alternative political vision, which might be called the "surfboarding theory of politics," goes back to Tocqueville's famous commentary on the United States. It holds that times of great public concern tend to generate rapid (and often impul-

sive) change. The big political waves create opportunities for those who are willing to plan and lead, because the big waves tend to override the normal constituency-service tradition that protects competitors from competition.

The surfboarding theory is well illustrated by the 1970s and the vast changes in antitrust that were wrought in that period. Inflation was the big political problem that Congress and the Nixon and Ford administrations faced on the economic front. Antitrust was widely seen as a good way for politicians to "do something" about the inflation problem. In quick succession, Congress made violations of the Sherman Act a felony and increased the fines twentyfold; repealed the old laws that allowed states to exempt retail price maintenance schemes from the federal antitrust laws; substantially increased the Justice Department's investigational capability in civil cases; established the pre-merger notification scheme that still continues to make Senators Hart and Scott and Representative Rodino famous; doubled (in real terms) the enforcement budgets of the Antitrust Division and the FTC; and adopted a dangerous provision intended to give the state attorneys general the power to bring *parens patriae* suits on behalf of local citizens. All that was not some exercise in narrow, interest-group politics: it was a groundswell of public concern that gave advocates for competition a chance to argue for more effective antitrust processes and elimination of traditional rate and entry regulation in industries like airlines and trucking. Of course, interest groups were involved: the discount stores no doubt supported repeal of the retail price maintenance exemption, against "Mom and Pop" and retail druggist opponents, but neither group was responsible for the legislation's breathlessly swift passage through Congress. Rather, the message that reverberated around Capitol Hill and the constituencies back home was that "resale price maintenance keeps prices higher and we want to stop that type of thing." Whether that particular decision or the decision to make Sherman Act violations felonies was wise can be debated, but it was not narrow, interest-group politics that produced the results.

### Enforcement Choices and Effects

The editors' analysis begins from an unequivocal point: "The model of public choice insists that the same rational, self-interest-seeking motives that animate human action in ordinary markets be applied to decision-making in the public sec-

tor as well. The assumption that *all* individuals, in or out of government, pursue their own self-interest is the fundamental tenet of public choice."

This statement is correct in many instances, but misleading in others. The same "self-interest motives" often do not exist in "ordinary markets" and the "public sector," especially in a mission-oriented agency such as the Antitrust Division. There, individual self-interest often has to be measured in terms of psychic returns (rather than economic ones)—the psychic returns of helping to further what one believes to be a good policy. Staff tend to be pulled together by a common belief that cartels are bad and government-managed rate-and-entry cartels are no better. The antitrust enforcer often has a sense of being quite out of place in a federation of bureaucracies so often given to protecting very specific economic constituencies from competition.

There is, of course, no single definition of "self-interest" that prevails at the Antitrust Division or any other agency. The investigators tend to have a bias, at the margin, in favor of bringing and litigating cases. They are more likely to investigate and make a recommendation to bring a case that looks like a "winner," with the result that some hard cases sometimes never get investigated or brought. The antitrust agency may sometimes decline to prosecute because it lacks the information or resources to analyze the situation. Conversely, staff interest in what seems a "sexy" area may result in waste of resources. But that is just standard error—not some systematic impetus to serve one competitive interest *vis-à-vis* another.

The history of the modern leadership of the Antitrust Division has also been interesting, because it does not fit any narrow public-choice model of political self-seeking. Every assistant attorney general since Donald Turner was appointed in 1965 has been a professional with actual experience teaching or practicing in the field of antitrust; and none of them has gone on to high public office in any administration. (One did go on to be associate attorney general and two to be federal judges.) During the same period, the picture was clearly different at the Federal Trade Commission: many FTC commissioners had no prior antitrust credentials or experience at the time of their appointments, and at least three (former chairmen Casper Weinberger and James Miller and former com-

missioner Elizabeth Dole) went on to hold Cabinet posts in the same or subsequent administrations.

The editors' broad-brush conclusion that "antitrust enforcement is shaped largely by private interests and not the public interest" seems to ignore several major efforts by the Antitrust Division that caused trends that other countries are now following. One example is the Antitrust Division's seven-year battle (1968-1975) under assistant attorneys general Turner, Zimmerman, McClaren, and Kauper, to break the New York Stock Exchange cartel on commission rates. At the time, every stock exchange in the world had a similar cartel, and the Antitrust Division was assured that orderly markets would fail if commissions were eliminated. Nonetheless, they were eliminated by a combination of regulatory processes at the SEC and legislative action by Congress, plus some litigation—a continuing process in which the Antitrust Division decided to play a very active and visible role because those of us involved saw the possibility of major consumer benefits. Today almost every stock exchange in the world, save Tokyo, has eliminated fixed commissions and allowed competition. Similarly, the Antitrust Division's major case against the then-nationwide telephone monopoly AT&T was brought by Assistant Attorney General Kauper and ultimately settled by Assistant Attorney General Baxter through a decree that has introduced enormous competition into the long-distance and equipment businesses. That process has shown the way for reformers in other countries to break longstanding communications monopolies.

The overall impact of the Antitrust Division's heavy commitment of resources to criminal enforcement against cartels and the Division's success in getting ever heavier sentences against violators is, of course, much harder to measure—but anybody who advises actual market participants must recognize that the Antitrust Division has had a substantial effect on restraining companies' temptation to improve their bottom lines by agreeing with their competitors not to cut prices or poach on each other's customers. It is, of course, true, as the chapter by Peter Asch and Joseph J. Seneca recognizes, that antitrust prosecution of unsuccessful cartels is more likely than prosecution of successful ones, since the unstable cartel more often produces disgruntled participants who will turn in their conspirators to

the Justice Department in return for immunity. Yet prosecuting a marginal cartel and meting out substantial penalties to individuals for cartelizing conduct can apparently have a substantial deterrent effect on the next would-be cartel participant—who may be in a field where cartelizing could be more effective and enduring. Such general deterrence does not have a complete effect, because the potential gains for success are often seen as large and the temptations substantial. Nonetheless, the enforcement effort is not substantially different than punishing bank fraud regardless of whether the convicted defendant got away with \$100,000 or \$100 million.

Almost all Antitrust Division activity is far—unrecognizably far—away from the picture the editors paint: antitrust enforcement as a systematic process of favoring one special interest group at the expense of others.

### **Economic Studies and Correlations**

The best studies in this volume are the old ones: George Stigler's 1966 essay on "The Economic Effects of the Antitrust Laws" and Judge Richard Posner's 1970 essay, "A Statistical Study of Antitrust Enforcement."

The volume also includes a number of more recent studies designed to show that antitrust is somewhat perverse in its macroeconomic effects. They are intriguing, but hard to take seriously. One is by Shughart and Robert Tollison on "The Employment Consequences of the Sherman and Clayton Acts" and another, by Shughart, Tollison, and Jon Silverman, covers "Antitrust Enforcement and Foreign Competition."

The "Employment Consequences" study suggests that "on balance, antitrust has raised the level of unemployment in the economy." The authors come to that conclusion through an evaluation of Justice Department (but not FTC!) cases during the period 1932-1981. At least in part, the authors' conclusion rests on the idea that "antitrust attacks generally efficient arrangements in the economy," and thus retards growth. That is certainly possible, but the alternative seems equally possible. Assume that antitrust attacks some employment-intensive cartels, and, by breaking them, forces some of their less efficient participants out of business, while increasing the spurs to efficiency among the survivors. (That is, of course, precisely what happened in turbine generators after the Antitrust Division



successfully prosecuted the great electronic equipment price-fixing conspiracy in 1961 [*U.S. v. General Electric*]; Allis Chalmers Co. simply dropped out of producing turbines.) On a more controversial note, the repeal of the resale price maintenance exemption in 1975 and antitrust enforcement against such schemes (something that the Antitrust Division has pursued infrequently since 1975) could also decrease employment by tending to assist those who wished to sell on the basis of straight price rather than more people-intensive point-of-sale services. Of course, the more important point is that antitrust policy is such a small factor in overall employment that it is very hard to feel comfortable that the creators of such imaginative regressions have excluded all the larger sources of potential static from their analyses.

Meanwhile, the "Antitrust Enforcement and Foreign Competition" study advances the provocative thesis that the impact of foreign competition is felt most heavily by small firms and that this generates a political demand that economic burdens be imposed on larger firms at times of substantial import penetration—thereby causing periods of growing imports to coincide with increased antitrust budgets and enforcement efforts. This attempt to correlate foreign imports and antitrust budgets, though intriguing, bears little relation to what actually happens. The most that one can say, and this is well illustrated by the 1970s, is that public concern about inflation will produce pressure for increased antitrust budgets; deregulation of industries that are visible to voters/consumers (such as airlines); and impetus for more liberal policies on imports. Conversely, a period in which enterprises and voter/workers are feeling more insecure about survival will produce pressure for protections against imports and reduction of public resources for antitrust enforcement (as we saw in the 1930s and are seeing again in the 1990s). But to try to correlate "import penetration" and "antitrust budgets" to narrow, small-business interest politics seems utterly unpersuasive to one who has been actively involved in the budgeting process.

If the editors wished to test their economic theories more persuasively, they would have

commissioned one or more studies comparing consumer price trends in the United States with those in some country in which antitrust enforcement is not a serious matter and cartels are quite common, such as Japan or Italy. We know from statistical studies that the U.S. consumer has more purchasing power than his foreign counterparts because the United States has tended to have more competitive, less-protected internal markets for agricultural products, services, and consumer goods. If antitrust enforcement and fewer cartels could be demonstrated (or dismissed) as explanations, then some useful guidance might be provided for policymakers and thinkers, both in the United States and abroad. (My own strong hunch is that liberal import policies have often been much more important than antitrust in achieving competitive results for U.S. consumers in such diverse fields as automobiles, wine, and consumer electronics.)

### Conclusion

McChesney insists that "antitrust is economic regulation [that] regulates the same things that other forms of regulation have traditionally covered." This recurring formulation hides a lot of things in a few words. It may be true of modern antitrust merger regulation under the Hart-Scott-Rodino Act—but it is generally not true of the rest of antitrust enforcement. Antitrust enforcement is concerned with prices and market entry. It is "economic regulation" in roughly the same sense that SEC disclosure regulation is "economic regulation." But unlike "economic regulation" as we normally know it, neither the Antitrust Division nor the SEC is setting prices or controlling market entry or output. Antitrust enforcement and securities disclosure regulation are both concerned with the openness of markets—and with economic incentives—rather than government-mandated terms of trade. The line between "law enforcement" and "economic regulation" is never entirely clear, and, alas, the McChesney-Shughart volume does little to clarify it.