by individual complainants but by a large and vigorous Federal bureau, like or part of the Federal commissions that now administer trade, interstate commerce, communications, pure food, etc. Before the institution of these commissions and regulatory departments we used to rely on private suits to correct abuses; but their effect was feeble and found insufficient. The Patent Office would have to be much altered to take on such a function, since its whole tradition is simply to grant a patent to every applicant, unless a technical anticipation can be found, ignoring questions of economics and public welfare. R. L. Meier, like various students,[457] proposes that after 5 years of nonworking, any such patent be opened to anyone's use, with the patentee free to sue for royalties, to be set by the court. Thus the burden of proof would be shifted from the complaining outsider to the patentee, and the free initiative, to use any idea one could find or think up, which a patentee had enjoyed for more than 5 years but had not carried through to working, would be transferred to anyone else who thought he could use the published idea. But the proposal does not fully meet the cases of justifiable nonworking, nor the very numerous inventions which need concentration or monopoly of development and manufacture. Neither would the Kefauver bill,[230] which after 3 years from date of patent application would grant an unrestricted license to every qualified drug manufacturer applying, with a ceiling fee of 8% of the licensee's selling price. The various abuses uncovered in the drug industry, reflected in highest profits, and 24% of the sales dollar going to competitive sales promotion, may well justify such a strong remedy. The Department of Health, Education, and Welfare has already set up such a compulsory license system in place of former free public use, and found it demanded by the mental drug manufacturers.[458] The recommendation of the National Patent Planning Commission [459] would allow court discretion as to whether the patent monopoly should be sustained against infringers, or compulsory license granted, in fields of defense, health, and safety.

[471] We have spoken of "evils" attacked by various compulsory license laws: we may need to ask whether some of them *are* evil. The mutual interference of basic and improvement patents we may safely call such. Monopoly is often not an evil, in industries of high first costs, like the public utilities and many hard goods manufacturing industries, that have high costs of tooling up, to turn out a moderate number of identical devices. So the British law provides that a compulsory license may be exclusive, even against the patentee. Where competition should be provided, a question remains of *how much* competition we want, whether unlimited or by just a few firms, lest the scale of working become too small. The maintenance of quality, especially in drugs, may be a sound motive for monopoly. Good behavior, maximum production, by a monopoly, may speak against attacking it.

[472] Nonworking of a patent may be no evil but a useful correction of the patent system, as we said anent the usually misrepresented suppression of inventions (¶ 304–319). An unworked patent must be on the average of small importance, and seems at first glance a mere nuisance, especially if someone wants to work it. But if the owner refuses to license it he must have a reason, such as owning a better way, and this would need be inquired into by bureaucrats seeking the