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STUDY PAPER NO. 22

AN EVALUATION OF ANTITRUST POLICY: ITS RELATION TO ECONOMIC GROWTH, FULL EMPLOYMENT, AND PRICES

BY

THEODORE J. KREPS

MATERIALS PREPARED IN CONNECTION WITH THE
STUDY OF EMPLOYMENT, GROWTH, AND PRICE LEVELS
FOR CONSIDERATION BY THE
JOINT ECONOMIC COMMITTEE
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This is one of a series of papers being prepared for consideration by the Joint Economic Committee in connection with their Study of Employment, Growth, and Price Levels. The committee and the committee staff neither approve nor disapprove of the findings of the individual authors.

LETTERS OF TRANSMITTAL

JANUARY 25, 1960.

To Members of the Joint Economic Committee:

Submitted herewith for the consideration of the members of the Joint Economic Committee and others is Study Paper No. 22, "An Evaluation of Anti-Trust Policy: Its Relation to Economic Growth, Full Employment, and Prices."

This is one of a number of subjects which the Joint Economic Committee has requested individual scholars to examine and report on in connection with the study of "Employment, Growth, and Price Levels."

The findings are entirely those of the author, and the committee and the committee staff indicate neither approval nor disapproval of this publication.

PAUL H. DOUGLAS,
Chairman, Joint Economic Committee.

JANUARY 21, 1960.

Hon. PAUL H. DOUGLAS,
Chairman, Joint Economic Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR DOUGLAS: Transmitted herewith is one of a series of papers being prepared for the "Study of Employment, Growth, and Price Levels" by outside consultants and members of the staff. The author of this paper is Theodore J. Kreps, of Stanford University.

All papers are presented as prepared by the authors.

OTTO ECKSTEIN,
Technical Director,
Study of Employment, Growth, and Price Levels.

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STUDY PAPER NO. 22

AN EVALUATION OF ANTITRUST POLICY: ITS RELATION TO ECONOMIC GROWTH, FULL EMPLOYMENT, AND PRICES

(By Theodore J. Kreps)

INTRODUCTION

The task of evaluating the relation of antitrust policy to economic growth, full employment, and prices involves at least five major sets of puzzling problems. First, what is meant by antitrust policy? Is it the policy set forth in Supreme Court decisions, in political oratory, and in classical economic theory? Is it the policy actually legislated, as amended and interpreted with many statutory exemptions ranging from agriculture to Webb-Pomerene export cartels? Is it the antitrust policy that resulted de facto when for decades at a time enforcement activity and funds were negligible? Is it the policy set aside in time of war and at other times countervailed by administrative agencies such that in many areas even the Government has become a promoter of monopoly? Or is it a mosaic of all these fragments of theory and practice?

Second, does any relation exist between antitrust policy, however defined, and economic growth, full employment, and prices? If so, why is it rarely given a mention as a causative factor, indeed almost never listed as significant either in the economic literature analyzing the reasons for economic growth, or in the texts on employment theory, or in treatises on money and prices? If such a relation does exist, is it measurable? Since growth, employment, and prices represent performance tests, does data exist sufficient to assess what the relation might be in the operations of individual firms, particular industries, diverse national economies and societies? How isolate its impact at these levels from that of more powerful forces that affect economic growth, employment, and prices? Can "controls" be found, that is, actual convincing evidence what growth, employment, and prices might have occurred had there been no antitrust policy as such?

Third, what is economic growth? Is antitrust policy one of the major forces operative historically and at present in well-developed and underdeveloped economies? Do rates of growth vary with enforcement activity between different periods of time within the United States or between exempt and nonexempt industries or between various Western economies in recent periods with and without antitrust policy? Are statistics available? Even if they were can any such comparisons be justifiably made? Do they yield definitive results?

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Fourth, what is so-called full employment? Are such employment levels in any way measurably adversely or favorably affected by variations in antitrust policy as compared with employment levels in highly planned economies during periods of war, hot and cold? Since the forces affecting employment levels and stability are so diverse, how isolate the impact of antitrust policy?

Fifth, among the millions of prices that are being paid in thousands of markets, which are the ones that antitrust policy is supposed to affect? Certainly not the prices paid to over 50 million wage earners for their labor. Nor the prices paid to millions of investors for the use of their savings in myriad long-term, short-term stock-, bond-, and money-markets. Nor in the main do the prices of farm products come within the orbit of antitrust policy intent or action. Nor the prices paid for railway services, electricity, water, gas, atomic energy, the multifarious hardware and weaponry of war. Nor the prices paid for the commodity and service procurements of governments, Federal, State, and local. Nor does antitrust policy cut any ice with respect to most of the prices consumers pay, whether in the rents of tens of millions of houses; apartments; industrial, office, and commercial buildings; or in the prices of the educational, medical, automobile- and home-equipment-repair, and maintenance services. Nor does antitrust policy affect the tax take, roughly 30 percent of national income. In so vast a price universe, upon what relatively small cluster of prices has antitrust policy had a measurable impact? Obviously some small portion of wholesale and retail prices, in fact, actually less than 30 percent of consumer purchases. So far as antitrust cases are concerned more than half the nonlabor cases involve in one way or another various branches of the steel, electrical manufacturing, and oil industries. How measure the extent to which these may have influenced general price levels?

Such are the five major sets of baffling problems about which center the assignment undertaken to give a preliminary and tentative type of evaluation of the relation of antitrust policy to economic growth, employment, and price levels.

I. What Is the Meaning of Antitrust Policy?

Historically antitrust policy, like a gnarled oak subjected to unsystematic pruning by weather, animals, and man, has grown irregularly, inconsistently, from various origins in several directions.[1]

While under English common law there were remedies against "forestalling, regrating, and engrossing," antitrust policy debates in the United States started with Granger agitation in the 1870's against high and discriminatory freight rates. The term "antitrust" was the public battlecry against the Standard Oil trust of 1879 and against other industrial concerns which used the trust method of combination.[2] First fruits of the agitation against monopoly evils were the so-called Granger laws, by which several Western States subjected railroads to varying degrees of public regulation, followed by antitrust legislation in some of the Southern States. After the famous decision in *Munn* v. *Illinois*, the regulatory authority of the Federal Government was invoked. Congress passed the Interstate Commerce Act in 1887

[1] For a compendium of Federal antitrust laws in force as of Jan. 1, 1959 see "The Antitrust Laws—A Basis for Economic Freedom," a Staff Report to the House Antitrust Subcommittee, Government Printing Office, Washington, 1959. Pp. x, 109. It gives the text of 81 statutes.

[2] See "The Monopoly Issue in Party Politics," Editorial Research Report, vol. II, 1936, pp. 5-8.

and the Sherman Act in 1890. The latter outlawed "combinations in restraint of trade" and monopoly or attempts to monopolize.

According to a recent decision of the Supreme Court: The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.[3]

Only a few antitrust cases were instituted during the first decade of the Sherman Act. Government efforts to use the new statute to break up industrial monopolies met a serious reverse in 1895. In a suit brought to prevent acquisition of additional refineries by the Sugar Trust, the Supreme Court ruled that Congress had no power to legislate concerning manufacture, which was held to be an inherently local pursuit, and further that a combination of manufacturers did not violate the Sherman Act since it affected interstate commerce only indirectly.[4]

Respect for the antitrust law was restored by Theodore Roosevelt's "trust-busting" campaign and by Supreme Court decisions during his administration. In the *Nothern Securities* case [5] the Court ordered dissolution of a company which had been formed to hold the stock of competing railroads in the Northwest. And in the "beef-trust" case [6] the Court ordered dissolution of a packing combine alleged to be restricting competition in the meat industry. The latter decision brought manufacturing within the scope of the Sherman Act, thus removing the handicap to antitrust enforcement seemingly imposed by the 1895 decision in the sugar case.[7]

A new guide to antitrust enforcement was established in 1911 when the Supreme Court, in decisions ordering dissolution of the Standard Oil Co. and the American Tobacco Co.,[8] promulgated the "rule of reason."

A decade of increasing popular debate and agitation over trusts led all groups in 1912 to pledge "an increasing warfare in Nation, State, and city against private monopoly in every form." A plan of action had been outlined as early as 1900 which sounds strangely modern:

Existing laws against trusts must be enforced and more stringent ones must be enacted, providing for publicity as to the affairs of corporations engaged in interstate commerce, requiring all corporations to show, before doing business outside the State of their origin, that they have no water in their stock, and that they have not attempted, and are not attempting, to monopolize any branch of business or the production of any article of merchandise; and the whole constitutional power of Congress over interstate communication shall be exercised by the enactment of comprehensive laws upon the subject of trusts.[9]

In 1912 it was furthermore advocated that there be enacted a declaration by law of the conditions upon which corporations should be permitted to enaged in interstate trade. Specifically included among such conditions were—

the prevention of holding companies, of interlocking directors, of stock watering, of discrimination in price, and the control by any one corporation of so large a portion of any industry as to make it a menace to competitive conditions.

[3] *Northern Pacific Railroad Company* v. *United States* (356 U.S. 1, 4).
[4] *United States* v. *E. C. Knight Co.* (156 U.S. 1).
[5] *Northern Securities Co.* v. *United States* (193 U.S. 197 (1904)).
[6] *Swift & Co.* v. *United States* (196 U.S. 375 (1905)).
[7] Editorial Research Report, "Enforcement of the Antitrust Laws" (vol. 1, No. 7, Feb. 19, 1947, pp. 131, 132).
[8] *Standard Oil Co.* v. *United States* (221 U.S. 1) and *American Tobacco Co.* v. *United States* (221 U.S. 106).
[9] Democratic Party platform in 1900. The plank was written by William Jennings Bryan.

On October 15, 1914, the Clayton Act was passed which forbade a corporation to acquire any stock of a competing corporation in the same industry or line of commerce and prohibited a holding company from acquiring the stock of two or more competing corporations, where such acquisition would substantially lessen competition or restrain commerce or tend to create a monopoly. The act prohibited certain trade practices where the effect would be substantially to lessen competition or promote monopoly. And it forbade interlocking directorates among large corporations that were competitors. The new law, however, did nothing to change the "rule of reason." [10]

A companion act of September 26, 1914, set up the Federal Trade Commission and gave it power to investigate activities of corporations engaged in interstate commerce, to report violations of the antitrust laws to the Attorney General, and to enter cease and desist orders against corporations which it found were engaging in "unfair methods of competition in commerce" or violating provisions of the Clayton Act.[11]

In 1926 the Federal Trade Commission created a special division to supervise trade-practice conferences, in which it cooperated with businessmen in defining practices to be regarded as "unfair methods of competition" banned by the Trade Commission Act. Numerous trade-practice conference agreements were negotiated and promulgated, preventing so-called guerrilla competition and promoting "smoothness and stability of business operations." After 1930 this activity died down as did that of the Antitrust Division. The latter instituted but five cases in 1931 and only three in 1932.

The first attack of the Roosevelt administration on the problem of destructive competition was a scheme of industrial control that required partial suspension of the antitrust laws. When the national industrial recovery bill was before the Senate, June 7, 1933, Senator Wagner, Democrat of New York, asserted that the Sherman Act was based on an outworn economic philosophy and had failed to prevent excessive concentration of wealth or to protect the economic opportunities of small business and consumers. He held that NRA codes would fulfill the objectives of the antitrust laws by making "competition constructive rather than ruinous" and by permitting "cooperation whenever a wise policy so dictates."

The Supreme Court in the famous *Schechter* decision put an end to the National Recovery Administration.

In the meantime, concentrated economic power was being restricted or subjected to Government control by laws to separate investment banking from commercial banking, to regulate issuance of securities, to limit operations of public utility holding companies and to strengthen Clayton Act prohibitions against price discrimination, among other reforms. In 1938, Congress authorized the formation of the Temporary National Economic Committee which recommended a large number of changes in our patent laws and in antitrust legislation generally. But few thus far have won enough support to be embodied into law.

There did take place, however, a considerable increase in antitrust activity. Before 1935 appropriations to the Department of Justice

[10] Editorial Research Report, Feb. 19, 1947, pp. 133, 134.
[11] Ibid., p. 134.

for antitrust enforcement had ranged from $100,000 to $300,000 a year. Before the end of World War II they began to exceed $2 million and more a year.

Law is often obliquely made by changing the enforcement machinery; thus the fivefold increase in the Antitrust Division's appropriation between 1938 and 1942 was a more important contribution to an effective antitrust policy than all of the amendments to the Sherman Act ever passed.[12]

Antitrust policy thus, is a summation of legislation (1) prohibiting combinations in restraint of trade, judicially amended by the "rule of reason"; (2) of legislation prohibiting monopoly, attempts to monopolize, or mergers lessening competition; (3) of legislation prohibiting some restrictive business practices per se such as price fixing and interlocking directorates; and (4) of legislation limiting to actual differences in cost such discriminatory practices as might tend to "lessen competition." But it is more than legislation. It covers also deliberate suspension during both World War periods and the Korean war, also de facto nonenforcement except during the Theodore Roosevelt-Taft administrations and the years 1938 to 1941, 1946–50, and recently. Not to be forgotten is the vast area of statutory exemption from Federal antitrust policy: all intrastate commerce, public utilities, agriculture, most activities of organized labor, transportation including shipping, airlines and railroads, oil imports and production, retail prices, and certain exports.

II. Diversity of Views Concerning Impact of Antitrust Policy

What relation can such a multimorphous antitrust policy have to economic growth, employment and price levels? Observers disagree, depending on whether they regard antitrust policy as:

1. Potentially and actually beneficial.
2. Potentially beneficial with improved enforcement.
3. Potentially beneficial with substantive amendment.
4. Unworkable and detrimental.

1. ANTITRUST POLICY POTENTIALLY AND ACTUALLY BENEFICIAL

The first point of view, that antitrust policy "as is" has contributed to economic growth, employment, and price stability, is often held by those comparing business organization and performance here with that abroad. Thus Prof. Raymond W. Miller of Harvard writes:

What the world needs is the Sherman antitrust principles put into operation all over the world. If Europe falls to the Soviet principle much of the fault will be attributable to the cartel concept of business.[13]

The theme song here is the familiar one: antitrust policy has preserved and is needed to preserve the very existence of free, private, competitive enterprise, or in general, of the "American way of life." As President Roosevelt expressed it in his famous message to Congress asking for the establishment of a Temporary National Economic Committee (TNEC):

the liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state itself. That, in its essence is fascism—ownership of government by an individual, by a

[12] Donald Dewey, "Monopoly in Economics and Law," Rand McNally & Co., Chicago, p. 156.
[13] Raymond W. Miller, "Can Capitalism Compete? A Campaign for American Free Enterprise," Ronald Press Co., New York, 1959, p. 74.

group, or by any other controlling private power * * * big-business collectivism in industry compels an ultimate collectivism in government.[14]

The fact may well be worth reemphasizing that wherever totalitarianism, whether of the right or left, has gained supremacy, the reins of power have been seized by, or entrusted to, vigorous opponents of antitrust policy. Free, private, competitive enterprise has been supplanted by state trusts or a cartelized, monopolistic "new order" or "corporate state." As, among many others, Harold E. Stassen, then president of the University of Pennsylvania, has stated:

> World economic history has shown that nationalization and socialization have come when there has been complete consolidation and combination of industry, and not when enterprise is manifold and small in its units. World economic history has also shown that when there is a legion of men in enterprise who have the authority to make their own independent decisions, then there is a toughness and vitality in an economic system not found on any other basis.
>
> We must not permit major political power to be added to the other great powers that are accumulated by big business units. Excessive concentration of power is a threat to the individual freedoms and liberties of men, whether that excessive power is in the hands of men of government or of capital or of labor. We must be vigilant to diffuse power and keep it responsive to the will of the people.[15]

German cartel advocates disagree

Thus Germany, for example, in 1926 had an economic inquiry similar to that of the Temporary National Economic Committee. Under the liberal Weimar regime a monopoly and cartel control law had been enacted. Yet the commission of inquiry or Enqueteausschusz [16] which published dozens of volumes as did the TNEC on the problems raised by monopoly and concentration of economic power was utterly blind to the fact that the cartelization of German industry was building the economic structure of national socialism and totalitarianism.

Their arguments against antitrust policy were similar to arguments frequently heard today: antitrust laws are "inconsistent and pose a vexing problem for businessmen," "competition by itself is inadequate as a standard for interpretation and administration," "monopoly and bigness are terms that have virtually lost all clarity of meaning," "only a firm endowed with substantial resources can prod another large firm into the type of ceaseless striving that results in maximizing the public welfare."

The commission endorsed the Kartellgericht, a sort of review board, set up to evaluate whether complaints of abuse of economic power or practices might be contra bonos mores. Needless to say, this court broke up no cartels. Both it and the Commission ignored completely the political menace that within a few years was to achieve Germany's defeat and destruction.[17]

The "twenties" became the era of rationalization, "effective competition under a revitalized rule of reason," and unhampered merger activity. I. G. Farben became dominant in the vast field of chemical products; Siemens & Halske and German General Electric became dominant in the electrotechnical field; Rohm & Haas in plastics;

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[14] "Message From the President of the United States," transmitting recommendations relative to the strengthening and enforcement of antitrust laws, S. Doc. No. 173, 75th Cong., 3d sess., 1938, pp. 1, 6.

[15] Address by Harold E. Stassen, daily Congressional Record, Feb. 12, 1947, p. A545.

[16] "Ausschusz zur Untersuchung der Erzeugungs- und Absatzbedingungen der deutschen Wirtschaft," Proceedings in some 30 volumes, published by E. S. Mitler & Son, Berlin, 1930.

[17] Thurman Arnold, "Antitrust Law Enforcement, Past and Future," Law and Contemporary Problems, winter 1940, Duke University Press, Durham, N.C., pp. 5,7. The phraseology in quotation marks in these paragraphs is strikingly similar (as are the recommendations) to those made in "Effective Competition," Report to the Secretary of Commerce, by his Business Advisory Council, Government Printing Office, Washington, D.C., 1952, pp. 2-4.

Zeiss in optical instruments, Telefunken in radio; Krupp in armaments and machine tools; Bayer in medicines—all made their now "famous" cartel agreements with similar giant concerns in France, Britain, America, and Japan. These agreements established worldwide "communities of interest" in patents, production, and international trade which were later in some cases to be honored by American firms over and above our needs for national defense.[18]

By the time the Nazis seized power, the merger and cartel movement has made such strides that 10 companies produced 69 percent of the coal. Three concerns produced 69 percent of pig iron (one concern, Vereinigte Stahlwerke or United Steel Works, had cartel quotas of 38 percent of pig iron and 38 percent of steel). Two firms, AEG (Algemeine Elektricitaets Gesellschaft) and Siemens-Halske dominated the electrotechnical industry. Two companies delivered 40 percent of the electric power. I. G. Farben alone owned 35 percent of invested capital in chemicals. Two companies, Hamburg-Amerika and North German Lloyd, controlled all shipping. Banking was dominated by four large institutions—the four "D" banks.

As Fritz Thyssen so well documented in his book, "I Paid Hitler," it was the giant concerns of Germany [19] that put Hitler into power. Long before 1930 or 1933 they were contributing vast sums to the Nazi Party exchequer. They were, of course, ably assisted by the German General Staff, the militarists, and the Junkers.

It is no coincidence, therefore, that almost immediately after Hitler gained power in 1933 a law was passed providing for compulsory cartelization of industry and trade and that 3 years later the whole German economy was put together like an army, tier upon tier, into groups ultimately headed by Cabinet ministers or other officials who, like Dr. von Schnitzler or Dr. Schmidt or Karl Krauch of I. G. Farben, were leaders (führers) of giant combines, now armed with governmental power.[20] It is also no coincidence that early in 1940 it became the main item on the business agenda of I. G. Farben executives and other "Generals in Grey Suits," "All Honorable Men," [21] to formulate a Neuordnung or "New Order" for the basic industries in Western European democracies.[22]

Prewar regimes in France, Italy, and Japan disagree

The regimes of Vichy France, and Italy and Japan were marked by similar developments. Industries were organized into combines. Antitrust policies of any sort were deliberately repudiated. In Germany businesses were grouped into kartelle; in France groupements; in Italy corporazione; in Spain syndicatos; and in Japan Zaibatsu and control associations. All were basically combinations in restraint of trade which at the insistence of opponents of antitrust principles were given legal status.

[18] See U.S. Senate Committee on Patents, hearings, 9 vols. (Washington, 1942) for elaborate documentation on this point. Also Guenter Reimann, "Patents for Hitler," New York (the Vanguard Press), 1942. Pp. iv, 216.

[19] For elaborate documentation of this point see U.S. Senate Committee on Military Affairs, under the chairmanship of Senator Harley S. Kilgore, "Hearings on Elimination of German Resources for War," 11 pts., especially pt. 3, pp. 170-181, 504-508, etc.

[20] For a detailed documentation of the position of more than 30 such industrialists, see Kilgore, pt. 5, pp. 837-886.

[21] See J. E. Du Bois and Edward Johnson, "Generals in Grey Suits," Bodley Head, London, 1953. Also James Stewart Martin, "All Honorable Men," Little Brown & Co., Boston, 1950, pp. viii, 350.

[22] For reproductions of the documents of the "new order" for France, Holland, Belgium, Norway, etc., see Kilgore, pt. 10, pp. 1413-1529.

The elimination of free enterprise in Vichy France was aided by the legalization of the trust or cartel in 1926 permitting combinations in "restraint of trade" so long as their objectives were "normal profits." As in other countries, combinations were stimulated by inflation. In iron and steel, chemicals, textiles, sugar, electrical trades, coal mining and other key industries, powerful trusts grew up. Each of them dominated a trade association including the smaller and medium-sized concerns. The trade associations were united into federations, and the pyramid was topped by the vast Confederation General de la Production Francaise, or CGPF.

This organization in turn was dominated by leaders of heavy industry such as Duchemin, head of the vast sprawling chemicals trust, Établissements Kuhlmann; de Wendel, head of the Comite des Forges; and Baron Petiet, head of a number of metallurgical and electrical corporations.

The leaders of the CGPF were in turn closely tied up with giant foreign concerns. Duchemin had close working relations with I. G. Farben; Credit Lyonnais, the favorite bankinghouse for large industry, was tied up with the great German Deutsche Bank; Schneider-Creusot, through Skoda, worked closely with the Krupps in Germany; de Wendel was not only a close friend of the prominent Nazi and German industrialist, Herman Roechling, but a charter member and chief financial supporter of the French Fascist Party, the Croix de Feu. As Pertinax, the well-known conservative French newspaper columnist, put it in his book, "It was the elite who were, to use the title of his famous book, 'The Gravediggers of France.'" [23] The first action of Pétain was to complete the monopolistic organization of French industry into groupements.

In Italy the story was the same. The industrial and economic base of fascism was the corporate state or state-sanctioned monopoly pushed through by vigorous opponents of antitrust policy of any sort. Says Herbert Matthews, correspondent of the New York Times in his book, the "Fruits of Fascism":

> the Po Valley landowners and Lombard industrialists, the Association of Italian Bankers, helped fascism financially and otherwise to achieve power * * *.[24]

Whether one picks up Gaetano Salvemini's "Under the Axe of Fascism" or Carl Theodore Schmidt's, "The Corporate State in Action," the conclusion is the same: big business collectivism in industry brought about collectivism in government. As soon as Mussolini gained control, all the industries and trades of Italy were organized into a hierarchy of corporations each with complete power over freedom of entry, prices, production, markets, etc.

Japan's industry was dominated in this way from the very day in 1868 that Admiral Perry's guns started that country on the road to militarization and industrialization. By the end of World War I economic controls had become concentrated in a few great Zaibatsu or family businesses. Four of them alone—Mitsui, Mitsubishi, Sumimoto and Yasuda—by a process of merger, purchase, and

[23] Gérand, Andre (pseud. Pertinax), "The Gravediggers of France." New York (Doubleday), 1942. Pp. xi, 612.

[24] "The Fruits of Fascism," by Herbert L. Matthews, p. 98. Harcourt, Brace & Co., New York, 1943. See also, Gaetano, Salvemini, "Under the Axe of Fascism." New York (the Viking Press), 1936. Pp. xiv, 402, and Carl Theodore Schmidt, "The Corporate State in Action." New York (Oxford University Press), 1939. Pp. 1, 173.

economic pressure secured control of 60 percent of the joint-stock companies of the empire, with Mitsui alone holding 25 percent of the total. It was precisely these financial and industrial units which took over the exploitation of Korea and Manchuria and promulgated a Greater East-Asia coprosperity sphere.

In Russia the entire economy is organized on the basis of nationwide trusts government owned and operated; also to a varying extent those of East Germany, Poland, Czechoslovakia and other Communist countries including Yugoslavia and China.

Antitrust policy and totalitarianism

All of these countries have almost identical business and industrial structures. Free, private, and especially, competitive enterprise is rigidly controlled or abolished as are freedom of occupation, unhampered or free movement of goods, services, and capital, and free markets generally Instead economic power and governmental power are fused. The inalienable economic rights of the public and liberties of enterprisers are denied the protection of antitrust laws of any kind.

After extensive hearings on the problem of cartels, various subcommittees of the Senate Committee on Military Affairs came to the following conclusion:

> Standing athwart the achievement of international goals of world prosperity and enduring peace is the international cartel system * * *. The extensive testimony before this committee and the great mass of testimony adduced by other congressional committees, have established beyond question that the international cartel or monopoly system has been subversive of political security, full production and employment, and the expansion of world trade. These effects have not been incidental * * * but have arisen out of their essential character. Private restrictive economic agreements and monopolistic activities designed to maximize profits inevitably minimize political security, jobs, and world trade.[25]

A recent writer, after examining all the evidence on the relation between monopoly and totalitarianism comes to the conclusion that—

> As a matter of fact, the conflict between monopoly and democracy is the basic struggle of our age, for it has shaped the whole history of the years since World War I. In their determination to prevent the triumph of the democratic forces, it was the monopolists in nation after nation who fostered the Nazi-Fascist movements; helped to give them state power; fed them the victories to make them strong; prevented the democratic peoples from uniting against them; and finally made it possible for the Nazi-Fascists to create this bloody world war.[26]

Antitrust policy in the United States, in short, as it has operated despite substantial nonenforcement and despite repeated modifications, is deemed by many to have been instrumental in preventing totalitarianism, both right wing and left wing. In keeping monopoly from encroaching further than it already had at the turn of this century, antitrust policy indirectly, through its impact upon competition and economic freedom, stimulated economic growth, maximum employment opportunity, and price flexibility. Regimented slave states may produce more for a short time, put everybody to work, and freeze prices but at an unendurable sacrifice of freedom and justice.

[25] Report from the Subcommittee on War Mobilization of the Committee on Military Affairs, U.S. Senate, "Cartels and National Security," pt. I, "Findings and Recommendations," Nov. 13, 1944, p. 10. (See also the hearings on "Elimination of German Resources for War," 1945 and 1946.)

[26] David Lasser, "Private Monopoly, the Enemy at Home" (Harper & Bros. Publishers, New York and London, 1945), p. 4. (See also among other notable studies, "Economic and Political Aspects of International Cartels," a monograph presented to the Senate Subcommittee on War Mobilization in 1944 by Prof. Corwin D. Edwards, then economist in the U.S. Department of Justice, Antitrust Division.

2. ANTITRUST POLICY BENEFICIAL IF ADEQUATELY ENFORCED

Scores of persons inside and outside of Congress have spoken and written about the need for enforcement of the antitrust laws. Some have on several occasions laid out comprehensive enforcement programs. An excellent and typical illustration of the assumptions and aims of such programs is that propounded to the American Economic Association in 1947 by Senator Estes Kefauver, then chairman of the Antitrust Subcommittee of the House Committee on the Judiciary, now chairman of the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary.

My belief in antitrust as the most desirable program for economic progress—

said he—

is based upon (1) the overwhelming disadvantages of its alternatives (status quo, socialization, regulation, deficit financing); (2) the economic consideration that in the long run prices tend to be lower and production greater under competition than under monopoly and that modern technology is tending more in the direction of small scale than larger scale operations; (3) the sociological consideration that levels of civic welfare appear to be higher in small business than big business communities (he referred to the research study by Prof. C. Wright Mills entitled "Small Business and Civic Welfare," published in 1947 by the Select Committee on Small Business of the U.S. Senate); and (4) the political consideration that the centralization of economic power will inevitably lead to the centralization of political power which in turn will endanger if not destroy our democratic institutions.[27]

A few of the Senator's recommendations for stronger enforcement have since become law: drastically increased appropriations, stiffer penalties, that cease-and-desist orders of the Federal Trade Commission be made final when issued, and that mergers by sale of assets be limited (Antimerger Act of 1950). He also proposed that the Federal Trade Commission serve as a master in chancery, that it make vigorous use of its section 6 economic factfinding powers, and that a reconstituted TNEC make an intensive study, among other matters, of the extent and significance of financial control over industry. To these in subsequent years have been added a series of other proposals for securing adequate enforcement of antitrust policy.

Such widespread support has been constantly in evidence in numerous hearings and reports by antitrust and monopoly subcommittees and by small business committees of the House and the Senate, etc. The pattern of testimony is uniform. Each group insists on vigorous antitrust enforcement for the other fellow. Few see any urgent necessity in their own business or industry. Representatives of the National Association of Manufacturers, for example, typically find in giant industry only vigorous competition in advertising, services, and products, that is effective competition even in the aluminum industry in the twenties, but see vicious monopoly in every trade union. Farm organizations want vigorous antitrust enforcement for both big business and labor, etc. Such differences, however, are less remarkable than the agreement underlying them: that antitrust policy if enforced is important for economic growth, employment, and price levels.

[27] Congressional Record, "Needed Antitrust Program for Congress," Jan. 12, 1948, appendix, p. A107.

Hearings on antitrust policy in 1955

One of the more extensive inquiries illustrative and typical of this point of view was that conducted throughout the spring of 1955 by the Antitrust Subcommittee of the House Judiciary Committee. It summoned 52 witnesses and sought to give roughly proportionate representation to each interest and divergent viewpoint among several hundred lawyers, businessmen, past and present Government officials and university professors with practical experience in antitrust problems. There were only six who did not dwell on the need to strengthen the enforcement of the antitrust laws.[28] They differed, of course, on questions of how and how much, particularly with respect to investigation procedures, prefiling review, settlement procedures, trial procedures, sanctions and remedies, administrative regulation, and coordination of agencies responsible for implementing antitrust policy.

All of the antitrust recommendations made by President Eisenhower in his "Economic Reports" have pertained to enforcement, e.g. that Federal regulation be extended to all mergers of banking institutions, that Federal approval be required for the acquisition of banks by holding companies, that the Clayton Act be amended to make explicit the Federal Government's authority to take action in merger transactions in which either party is engaged in interstate commerce and that cease-and-desist orders of the Federal Trade Commission be made final when issued, unless appealed to the courts.[29]

Similarly, the report of the Attorney General's National Committee To Study the Antitrust Laws, published in March 31, 1955, made no less than 74 suggestions of interpretative changes to serve as guidelines of policy for enforcement agencies and the courts. Practically all of these were bitterly attacked in the hearings [30] by associations representing small business, farm, labor, retail and wholesale organizations, university professors, lawyers for private plaintiffs in antitrust cases—in fact, by nearly every group except giant business organizations.

As was discovered by the subcommittee in its thorough analysis, the reason may well have been the nonproportionate makeup [31] of the Attorney General's Committee such that 33 of the 59 Committee members were lawyers or economists who had represented corporations that were defendants in antitrust or Federal Trade Commission cases. Indeed, 21 members were then representing defendants in 32 pending antitrust cases brought by the Department of Justice, and in 22 pending cases brought by the Federal Trade Commission.

In addition, 6 out of the 12 legislative proposals dealt with antitrust administration and enforcement. At the urging of Assistant Attorney General Stanley N. Barnes of the Antitrust Division [32] and of Chairman Edward F. Howrey of the Federal Trade Commission,[33] all except the proposal to authorize the Attorney General to issue a civil investigative demand to supplement traditional grand jury proceedings have

[28] See its "Hearings on Current Antitrust Problems," Government Printing Office, Washington, D.C., 1955, 3 vols., 2712 pp., especially pp. 1, 78-104, 230-231, 270, 299-301, 416, 417, 576-578, 636-638, 668, 739-752, 1546, 1846, 1847, 2143-2152, 2504, 2505.

[29] See, for example, "Economic Report of the President," Jan. 24, 1956, p. 79.

[30] See Hearings, op. cit., pp. 68-76, 184-189, 534-568, 1865-1910, 1946-1959, 1971-1973, 2101-2109, 2129-2134.

[31] Ibid., pp. 9-15, 204, 205, 1911-1914, 2080, 2101-2109, 2358, 2359.

[32] Ibid., pp. 223-225, 231-234, 244-247, 338-353.

[33] Ibid., pp. 2469-2476, 2461-2466.

been enacted into law. This was the only proposal considered by most witnesses [34] to weaken rather than strengthen the antitrust laws.

Similarly mixed was the appraisal of the suggestions recommended as guides for administrative interpretation and procedure. A few of these guides represent current practice, for example, those pertaining to the compliance program, the trade practice conferences and the consent order procedures of the Federal Trade Commission.[35] In addition, no opposition was expressed to recommendations that the Antitrust Division maintain "railroad release" and merger clearance procedures now in force, present consent decree practices and effective liaison with the Federal Trade Commission where there is possible overlap of jurisdiction. There was likewise agreement that the Department of Justice should conduct regular studies to determine whether its judgments have been effective to restore competition [36] (which it has not done).

But the remaining "guides" were opposed with vigor, as, for example, the recommendation that the Antitrust Division consider the 3–D remedy, that is, divorcement, dissolution, and divestiture, only as a last resort and never as a penalty. A few members felt that the majority are "even hostile to the breaking up of monopolies when they have been proved to be illegal." [37]

Furthermore, the recommendation that the Antitrust Division enter negotiations for a consent decree before a complaint has been filed was regarded as shaping the complaint to fit the decree. "One might as well send a man to prison for 5 years and then look for a 5-year crime with which to charge him." [38]

Objections to other so-called guides were neatly summarized in the hearings as follows:

1. There has been no comment on the "conspicuous failure of the Department of Justice and the Federal Trade Commission to undertake seriously the enforcement of section 7 of the Clayton Act."

2. There is no recommendation in the report that the antitrust laws should be enforced where appropriate, to accomplish structural changes in these industries which approach monopoly in their organization and market behavior. "Where requisite proof of combination exists * * * the precedent of the *Paramount* case * * * points the way to the kind of relief which can restore effective competition * * *."

A few members state: "the chapter (on administration and enforcement) offers a clear demonstration that the majority operates on the undeclared assumption that we have had too much rather than too little antitrust enforcement * * * the total effect of the recommendations is clear: to restrict the Antiturst Division's power of investigation, to curtail use of criminal prosecutions, to slow up the filing of complaints, to encumber the exercise of prosecutor's discretion with novel

[34] Ibid., pp. 184, 189, 397–409, 671, 1722, 1756, 2212–2214. Louis B. Schwartz summarizes their views on the proposal for a civil investigative demand as follows:

"The whole debate about the Department's investigative powers arose not from a Department complaint that it had inadequate power, but from defendants' complaints that the Department's power to command information *by grand jury subpena* was too extensive and untrammeled. Although the report does not specifically recommend against the grand jury investigation, what is contemplated is the gradual displacement of that effective and expeditious procedure by the relatively ineffective civil investigative demand. The attack on the grand jury subpena procedure would hardly succeed so long as there was no alternative device for compelling defendants to disclose facts prior to the filing of a complaint. Now one is offered. *Unlike the grand jury subpena it cannot be used to require persons to testify, but only to produce documents.* Moreover, a person may disregard the civil investigative demand without risk until the Department of Justice obtains a court order requiring compliance. The burden of justifying the demand for information is significantly shifted to the prosecution" (ibid., p. 1895).

[35] Ibid., p. 2521, testimony of Chairman Edward F. Howrey.

[36] Ibid., pp. 2214, 2215.

[37] Ibid., p. 2213.

[38] John C. Stedman, "The Committee's Report: More Antitrust Enforcement—or Less?" Northwestern University Law Review, vol. 50, No. 3, July–August 1955, pp. 316–341. The passage cited is to be found on p. 324. See also hearings, pp. 1896, 1897, 1937.

internal administrative reviews on request of a defendant, to expand the use of the consent decree in a manner calculated to remove the last possibility of public scrutiny of this useful but dangerous practice which, among other things, shields the defendants from damage suits by private parties, to water down the threat of treble-damage recovery, etc." [39]

A top expert on antitrust enforcement, speaking from years of executive experience in the Antitrust Division, and now professor of law at Wisconsin University, concludes a lengthy analysis of the enforcement recommendations of the Attorney General's Committee as follows:

> The report seems to end up, in short, with recommendations that would seriously reduce the effectiveness and vigor of antitrust enforcement, with only haphazard and minimal business supervision to compensate for reduction. In terms of our longstanding attitude that the best economic system is one that relies upon the forces of competition to provide necessary regulation and upon antitrust enforcement to keep the forces working well, these proposals hold little attraction. In an administered or regulated economy in which we did not flinch at extensive and continuing Government regulation, or in a brave new world in which we could depend on the willingness of business and industry voluntarily to do the right thing by the public, they might make considerable sense. Come the millenium, perhaps we should examine the committee proposals again. For the United States of America 1955 they will not do.[40]

The Antimerger Act of 1950

Another item upon which there was unanimous agreement among the witnesses was that the Celler-Kefauver Antimerger Act of 1950 needed strengthening. Up to 1955 over 3,000 concerns disappeared via the merger process, yet the Department of Justice and Federal Trade Commission together had brought only 11 complaints.

Even a casual glance at the names of the corporations merged[41] suffices to prove that the firms eliminated were not the financially weak, overspecialized, poorly organized, or inefficiently managed but rather the growing, efficient, profitable, vigorously competitive businesses with new processes and aggressive management. One-fifth of the industrial acquisitions involved companies with assets in excess of $50 million and two-thirds with assets over $10 million. To let such vigorous, independent units swallow others (whether like it or unlike it) of similar strength and competitive vigor is to sanction an economic cannibalism destructive of the American system of free, competitive enterprise. "The claim that big business in this country is more efficient than small rests upon mere assertion." [42]

If mergers resulted in more vigorous competition and lower profit margins, why should merger rumors spark a boom in the prices of stocks of the merging companies? Does the capitalization of anticipated noncompetitive quasi-rents that takes place in the stock market not merely assume but measure estimated variance in impact of antitrust policy? Especially so, if there are no particular advantages from concentration of research expenditures in large firms as compared with the product and process innovation that takes place in small

[39] Hearings, op. cit., p. 2215, summarizing the objections of Profs. Louis B. Schwartz, Eugene V. Rostow, Alfred E. Kahn, George J. Stigler, Walter Adams, and John Maurice Clark.

[40] John C. Stedman, "A New Look at Antitrust: The Report of the Attorney General's Committee," Journal of Public Law, vol. 4, No. 2, fall 1955, pp. 223–284.

[41] The House Antitrust Subcommittee's "Report on Corporate Mergers and Acquisitions," May 1955, app. 1, pp. 46–171, prepared from worksheets of the Federal Trade Commission, shows the name of the acquiring and acquired concerns involved in each of 1,770 mergers and acquisitions, together with the assets of the acquiring and acquired concerns, and the date of the transaction.

[42] See Corwin D. Edwards, "Big Business and the Policy of Competition," Western Reserve University Press, Cleveland, 1956, pp. 91–92.

firms? [43] Conclusive evidence of high correlation between size or increase in size of the firm and the rate of technological improvement has not yet been found.[44]

More than a third of the witnesses likewise urged vigorous enforcement of the Robinson-Patman Act, and emphasized the importance of the problems raised by quantity discounts, indirect discounts, double brokerage, varying service allowances, and discriminatory prices not justified by differences in cost.[45] In 1955 there was especial concern about the ruling of the Supreme Court in the *Standard Oil of Indiana* case,[46] making the good faith proviso an absolute and complete defense to the charge of price discrimination: further evidence of the extent to which minutiae of antitrust policy are deemed of practical significance.

More vigorous enforcement of antitrust policy was also urged by small businessmen from every field of commerce, industry, and labor. The owners of gasoline service stations, tire dealers, wholesale grocers, retail druggists, managers of cooperatives—each gave evidence from the operations of their business of the need for stronger enforcement of antitrust policy.[47]

The practices mentioned ranged from discriminatory pricing to coercion. The general alleged effect was to create inequality of competitive opportunity by obstructing freedom of access on equal terms to equity capital, to credit, to raw materials, to patents, processes, know-how, to Government contracts, to supplies, and to markets. Court records were presented in which independent fabricators, dependent on one or two giants for semifabricated materials but endeavoring to compete with subsidiaries or operating departments of the large integrated concerns, proved intimidation, obstructive, dilatory, discriminatory tactics in the delivery of supplies, and so on.

The ambivalent role of Government

More than a dozen witnesses singled out the Government itself as a promoter of monopoly.[48] The agencies most frequently thus incurring stricture were the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission, the Interstate Commerce Commission, and the Atomic Energy Commission. The burden of the argument was that the regulatory agencies were established to give the public the results which it would have obtained had competition been possible. If the regulators are captured by the regulated, antitrust policy becomes a lonesome activity of the Department of Justice and Federal Trade Commission. Enforcement is attempted in a vacuum.

Agency personnel have to get most of their facts from those of counterpart responsibility in industry. Their knowledge and experience is less, and even secondhand. Their pay is much lower, their

[43] See statement, among others, of Dr. Edwin B. George, director, department of economics, Dun & Bradstreet, "Hearings on the Economic Report of the President," January 1955, 84th Cong., 1st sess., Government Printing Office, Washington, D.C., 1955, p. 509.

[44] See Walter Adams and Horace M. Gray, "Monopoly in America," "The Government as Promoter," Macmillan Co., New York, 1955, who point out that the rate of invention and new products was greater prior to General Motors in the automobile industry than post-General Motors; that technological improvements in agriculture have exceeded those in any other major industry; that the small, competitive soft-coal firms have outdistanced the large monopolistic hard-coal firms, etc., pp. 13–15.

[45] Hearings, op. cit., pp. 15–16, 124–155, 524–545, 569–572, 626–643, 1535–1536, 1958, 1827–1828, 2042, 2199, 2251.

[46] Standard Oil of Indiana (41 FTC 263 (1945), modified 43 FTC 56 (1946), modified and affirmed 173 F. 2d 210 (7th Cir. 1949), revised and remanded, 340 U.S. 231 (1951)).

[47] Hearings, op. cit., pp. 61–63, 87, 88, 158, 159, 185–188, 190–192, 575–584, 630, 631, 1748, 1749, 1812–1814, 2466–2469, 2532, 2533.

[48] Ibid., pp. 61, 69, 180, 187, 193–195, 391–395, 572, 592–597, 660–664, 745–750, 761, 1847, 1959–1961, 2053, 2659.

tenure precarious, their staffs and funds inadequate. They are a favorite target for partisan political attack. The public interest they serve is vague, diffuse, and hard to define. They easily become immersed in the problems of intraindustry and interindustry groups.

Industry representatives, on the other hand, operate throughout successive public administrations and waves of public interest. They command ample funds and willing media to present their views and to work up detailed practical information on each issue as it arises. While opportunity, avenue, or effective spokesman for the public interest, even when clear cut, is intermittent, the interest of the litigants is implemented with unflagging advocacy by a favorable press and generous political contributions. A lump-sum special advantage of a few million dollars to one industry thus exerts more pressure than a general advantage of $1 to each of 180 million citizens.

Hence the basic problem of such agencies, as the Hoover Commission so repeatedly stressed, is the dual problem of objectives and standards. All other considerations—size of staff, adequacy of appropriation, administrative methods, enforcement procedures, trained personnel, planning programs, coordination between different agencies, etc.—all of these are dependent upon basic policy and enforcement.

How to keep general public policy and the goals of freedom of enterprise as envisaged in American antitrust laws in the forefront of the Government's regulatory activities? Without such a governor, Government by regulatory agencies may become but fragmented concatenations of short-term, shortsighted, private struggles for privilege. In such struggles the strong and organized usually win over the small, weak, and unorganized.

Among the witnesses testifying with respect to the Civil Aeronautics Board Senator Joseph C. O'Mahoney and Mr. Stanley Gewirtz of the Air Transport Association of America cited chapter and verse from their firsthand experience. The Senator, as former consulting attorney for nonscheduled airlines, noted that there were only 14 trunkline aircarriers in 1954 compared with 17 in 1938.

> Although the total revenues of the air carriers rose from $31 million in 1938 to $1,249 million in 1954 * * * the CAB and its preceding Government agencies have followed a policy which has been more favorable to the grandfathers than to free enterprise * * *. With the protective shield [of subsidies] thrown around them, they were able to prosper and to grow and by their organization, their trade association, they have constantly kept their point of view before the Congress hostile to the line that seeks to go in. I cite it only as an illustration to show how sometimes Government agencies cooperate with big outfits to bring about concentration.
>
> Mr. MALETZ. Senator, is it the act itself that excludes these new carriers, or is it the administration of the act?
>
> Senator O'MAHONEY. It is the administration of the act. The act was intended to keep the door open to new enterprise.[49]

Commenting on these facts and allegations Mr. Stanley Gewirtz, representing the Air Transport Association of America, far from complaining about "excessive Government regulation" as most business firms customarily do, was highly laudatory of the CAB, finding no error in a single one of its decisions and policies.

> We are probably the most precisely and heavily regulated industry in the United States today * * *. Has it paid off? We think it has * * *.[50]

[49] Ibid., pp. 163, 164. For numerous examples, see, among others, those given in the testimony of Senator Wayne Morse, pp. 393, 394; Congressman Reuss, p. 187; and Robert Nathan, p. 2039 ff.
[50] Ibid., p. 2636 et seq.

Mr. RODINO. Has the ATA at any time favored the entry of new carriers into the business, either in Board proceedings or in testimony before Congress on legislation liberalizing entry standards?

Mr. GEWIRTZ. I would say "No," we have not, and I do not propose to do it today. If you believe in freedom of entry, I say, tear up the act [of 1938] * * *. The pretense that certificated air transportation is a monopoly is essentially an exercise in semantics. * * * There is competitive duplication by 3 or 4 carriers for over 61 percent of the traffic of these first 50 pairs of cities. * * * That the CAB has not certificated a new carrier to duplicate the existing competitive services between the six or eight traffic-producing [most profitable] cities does not prove that the CAB is, in any sense, monopoly minded or industry dominated.[51]

The idea of "capturing" the Interstate Commerce Commission was first advanced, according to Senator O'Mahoney, at the very date of the passage of the Interstate Commerce Act. Mr. Richard Olney, attorney for one of the big railroads, stated:

If you will take my advice, your efforts will be directed [not toward attempting to repeal the act but] toward bringing about the appointment of men of intelligence and ability who understand the railroad problem.

From that day to this—

Senator O'Mahoney testified—

we find pressure groups of one kind or another seeking to sway the judgment of Congress in the exercise of its power, and today we see a general drift into the White House of control of these commissions.[52]

Corroborating Senator O'Mahoney's strictures with respect to the ICC, Prof. Walter Adams stated:

In my view, competition should be the paramount consideration in the action of regulatory commissions. * * * The ICC should not be allowed to bar freedom of entry into the trucking industry * * *. The ICC has been more solicitous about the welfare of the railroads and the existing trucklines than it has been about the reduction of rates or anything like that. Rate reduction has been effectuated primarily by competing means of transportation, by the trucks in the freight field and by the airlines in passenger travel.[53]

The same charges of fostering monopoly were made by several witnesses against the Federal Communications Commission. Congressman Henry S. Reuss of the Joint Economic Committee summarized the evidence as follows:

In no field is monopoly more threatening today than in that of television, where increasingly a few large networks and newspaper organizations are acquiring a stranglehold on the industry. The Federal Communications Commission has accelerated this trend. * * *

By a new FCC rule a national network was given legal permission to acquire a certain number of local UHF outlets * * * in Milwaukee * * * the result of the Federal Communications Commission decision and its handling of this policy was to remove two local independent stations from the face of the earth and substitute one chain.[54]

The Atomic Energy Commission [similarly] is giving the dominant companies in the electrical industry a preference today in the provision that only utilities spending at least $100,000 a year on research may participate in the study groups now working with the Atomic Energy Commission on industrial use of atomic energy. The National Rural Electric Cooperative Association has rightly protested that this in effect keeps the small power utilities out of this dramatic peacetime development of atomic energy. This is worse than monopolizing the opportunity to enter a field of business—it monopolizes the opportunity even to *prepare* to enter it.

There are many ways in which we could literally start right here in Washington to improve the competitive nature of our economy: By more effective use of the

[51] Ibid., pp. 2558, 2571 ff.
[52] Ibid., p. 166.
[53] Ibid., pp. 288–290.
[54] Ibid., pp. 187, 195, 196.

Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission, the ICC, the Government procurement agencies.[55]

There were a number of other areas in which nonenforcement of antitrust policy or contradictions thereof were stressed as impairing its efficacy. Among them, such administrative policies as studied laxity in enforcement of the antitrust laws, favoritism to giant concerns in granting procurement and research contracts, tax amortization certificates, depletion allowances, and subsidies.

Exemptions from antitrust laws

Congressional responsibility for inadequate enforcement was likewise considered substantial, not only in providing niggardly appropriations but in legislation authorizing the Attorney General to grant suspension of the antitrust laws for national defense reasons. The Senate Banking and Currency Committee pointed out that as a result "undesirable monopolistic practices may occur which will have unnecessary adverse effects on our competitive economy. They may continue long after the duration of the agreements and the emergency." [56]

Some of the witnesses pointed a finger at no less than 22 statutes of exceptions and exemptions effectuated by the Congress with 21 additional acts vesting antitrust implementation and policy enforcement in various regulatory agencies. Thus the Federal Reserve Board has the responsibility of enforcing the antitrust laws in the operations of nationally chartered banks. (Its sole action, that against Transamerica Corp., was lost in the courts.) The Department of Agriculture under the Capper-Volstead Act has a similar duty with respect to agricultural cooperatives which are empowered by the Secretary of Agriculture to enter into marketing agreements with processors to control sales and prices. Under the Clayton Act members of labor unions are allowed to get together to bargain collectively with employers, a right implemented by the Wagner Act. The Reed-Bulwinkle bill specifically authorizes the Interstate Commerce Commission to approve railroad traffic association agreements respecting rates and fares. Transoceanic shipping rates established by shipping conferences have for years been exempted from the antitrust laws upon certification by the U.S. Maritime Board. Combinations and mergers were sanctioned by Congress in the case of railroads in 1920, telephone companies in 1921, motor carriers in 1935, and water carriers in 1940. Rate agreements and pooling arrangements among airlines, when approved by the CAB, have been allowed since 1938. Combinations of marine insurance companies were exempted from the antitrust laws in 1920. The Miller-Tydings Act and the McGuire Act extended similar exemption to retailers for the purpose of effecting resale price maintenance.

Clearly, antitrust policy is not enforced by regulation per se. A mere law or public utility type commission is no automatic cure.

The establishment and maintenance of antitrust policy requires united administrative and legislative action. For those whose interest it is to nullify antitrust policy not only have far superior access to the public via a favorable press. They continually use finesse and finance to win friends and influence all persons who may be of help

[55] Ibid., p. 187. See also the summary by Dr. Robert R. Nathan, pp. 2054, 2055.
[56] Ibid., pp. 270, 366-370, 2506, 2507, quoting "Defense Production Amendments of 1953." Rept. No. 696, Banking and Currency Committee, U.S. Senate, 1955.

whether in the universities, the legislatures, or the regulatory commissions. They utilize all available educative and other media to mould the actions and policies of the Federal Government toward stabilization of market conditions, toward limiting challengers' freedom of entry, toward weakening vigorous competition, in short, toward emasculating antitrust and regulatory policy.

Thus Profs. Walter Adams and Leonard Gray in their book bearing the significant title, "Monopoly in America, the Government as Promoter," conclude—

> the Federal Government—although by tradition, popular regard, and legal mandate the defender of competition—has by a process of functional perversion become one of the principal bulwarks of concentration and monopoly.[57]

3. ANTITRUST POLICY POTENTIALLY EFFECTIVE WITH SUBSTANTIVE AMENDMENTS

By far the overwhelming majority of the writers on antitrust policy belong in this group. They regard antitrust policy potentially beneficial if substantively amended. Academic experts, notably so the economists, will vary in their prescribed reforms, differing least perhaps with respect to proposals such as repealing the McGuire Act and "Buy American" legislation, or lowering trade and tariff barriers. Businessmen, depending on whether they manage small or large enterprises, will vary from advocacy of drastic proposals exempting small enterprises but breaking up large ones to urging equally drastic proposals to amend the antitrust laws much in the way that the friendly neighbor conceded that the dog next door was "all right but needed his tail shortened" right behind the ears.

Legislators, depending in many cases on the sources of their campaign funds and constituency, show similar variance in their proposals. Lawyers and business economists, even more so those with giant corporate clients, frequently advocate legalistic, subtle, indirect but effective means for emasculating antitrust policy, while others in universities, labor unions, or noncorporate practice suggest ingenious countervailing argument and enforcement innovations.

To select typical illustrations amid such diversity is necessarily arbitrary, particularly so when the discussion is limited, as it is here, to the presentation of thumbnail expositions of the views of only three; an economist, a businessman, and a legislator. But it is hoped that these may suffice to give a taste of the flavor of thought of those who recommend strengthening antitrust policy by substantive amendments.

There is, of course, no hard and fast line between the "enforcers" and the "reformers," except in the gravamen of emphasis. Often the two viewpoints will be combined in a single paragraph, such as in that of the famous founder of the Chicago school of economic thought, Henry C. Simons:

> There must be vigorous and vigilant prosecution of conspiracy in restraint of trade and, above all, thoroughgoing reform in corporation law. The right to charter large corporations must be vested exclusively in the Federal Government; and the powers conferred on these legal creatures most carefully and narrowly limited. (From the viewpoint of practical reform, both our monopoly problem and our financial problem have to do largely with abuses of the corporate form, i.e., with the careless, extravagant dispensing of corporate powers.

[57] Walter Adams and Leonard Gray, "Monopoly in America," Macmillan, 1955, p. 145.

Operating companies must be limited in size, under special limitations prescribed for particular industries by the Federal Trade Commission, in accordance with the policy of preserving real competition.[58]

Views of a small automobile manufacturer

The last proposal has been suggested by many others, most prominently so in recent years by Mr. George Romney, president of the American Motors Corp. Testifying before the Senate Subcommittee on Antitrust and Monopoly, he said:

The economic size and influence of the Big Three is now so far reaching that their policy decisions are potentially capable of producing prosperity or depression for the Nation.

This brings us to a fundamental question. Are the antitrust laws adequate to provide for the minimum number of companies to produce needed competition in the automobile business?

The existing provisions in the Sherman Antitrust Act against monopoly are not adequate for two reasons:

In the first place, Sherman Act procedures are too slow. It took exactly 20 years in the courts to terminate the proceedings against the Aluminum Co. of America. It took 14 years between the filing and conclusion of the cases against General Motors Acceptance Corp. * * *

The second difficulty with existing antimonopoly procedures is that they are conducted in the atmosphere of a criminal trial. Questions of morality and ethics rather than economic and social policy have often determined court decisions in this field. With very few exceptions, the Government has been unsuccessful in curbing economic monopoly unless it could show that the defendant has been motivated by evil or predatory intent. * * * And this intent is provable only by demonstrating that he has, in fact, used exclusionary practices to obtain and maintain his position.

I propose a new approach to the question of competitive economic power in the automobile industry.

To promote competition, economic progress, individual opportunity, and to enlarge benefits to consumers generally, economic power in the automobile industry should be limited and divided. Limitations should be placed on firms whose size, integration, and financial strength make possible the domination of a national market. It is also desirable to maintain a sufficient number of firms in each basic industry to have adequate competition, to encourage cooperation on common problems in the areas permitted by law, and to prevent the development of an excessive imbalance of economic power.

To achieve the desired ends, the antitrust laws should provide that when any one firm in a basic industry, such as the automobile business, exceeds a specific percentage of total industry sales over a specified period of time, it shall be required by law to propose to an administrative agency a plan of divestiture that will bring its percentage of sales below the specified level. Where a firm is engaged in more than one basic industry, the maximum percentage of total industry sales should be fixed by law at a point lower than the percentage to be fixed for companies operating in only a single basic industry. Where a company is engaged in more than one basic industry, its competitive position is strengthened and it is able to dominate a single market with a lower percentage. This results from its ability to concentrate its resources on a single industry or product at any time and to expand its market position by relying on earnings from its other activities.

This proposed amendment of the antitrust laws would have a number of advantages:

(1) It would promote and preserve adequate competition.

(2) The companies affected, not the Government, would have the opportunity to originate the method of compliance.

(3) Achievement of the sales percentage requiring a split off or "birth" would become evidence of economic success.

(4) Competitive effort and growth would be encouraged, not restrained.

(5) Instead of making mere size itself an offense, the test under the law would be based on the size of a company in relation to that of its competitors. In big industries there would be big companies.

[58] Henry C. Simons, "Economic Policy for a Free Society," the University of Chicago Press, 1948, pp. 81-82, which reprints his article on "The Requirements of Free Competition" published originally in the American Economic Review, supp. XXVI, No. 1 (March 1936), pp. 68-76.

(6) An adequate number of companies in each basic industry would be assured.

Frankly, this proposal, if adopted, would make several new companies out of the Big Three. I believe this would be in the interest of stockholders, employees, dealers, customers, competitors, communities, States, and the Nation.[59]

Reforms advocated by a distinguished legislator

Among legislators none has been more persistently active in seeking to enforce and improve antitrust policy than Senator Joseph C. O'Mahoney. As early as 1924, then a candidate in the Democratic primaries in Wyoming, he ran on a platform which he named "A New Day and a New Deal," a phrase soon to mark an era of constructive reform. Prominent among his commitments: "I am against the control of our financial and tax systems by big business."

Later as chairman of the Temporary National Economic Committee, as chairman of the Joint Economic Committee, as member of the Senate Committee on the Judiciary and its Subcommittees on Antitrust and Monopoly, he became the author and advocate of scores of bills, authoritative reports, and publications on antitrust problems, continuously providing vigilant, national leadership.

In all his utterances, oral and written, he has invariably hit the heart of the antitrust enforcement problem and repeatedly advocated a basic cure. Violations of business ethics and the antitrust laws he repeatedly pointed out—

have not been and cannot be effectively prevented because, under the law as it stands, the Government has only two remedies worth mentioning—a suit for an injunction to prohibit a threatened violation of the law and a criminal indictment after an offense has been committed.

It is obviously impossible for the Federal Government to foresee violations, so that this remedy has never been effective. The criminal remedy has been no less futile and for an equally plain reason. Offense against the antitrust law are, for the most part, economic offenses. They do not, like murder, highway robbery, and similar crimes, necessarily involve moral turpitude. They cannot be prevented by the criminal remedy, they can only be prosecuted, and the penalty provided in the law [in 1939] is only a $5,000 fine which is surely not a deterrent to predatory executives who can hide behind the artificial personality of the corporation they direct.

The great defect of the antitrust laws, exemplified during the 49 years which have elapsed since the Sherman law was enacted in 1890, is that in their present form they depend for their effect upon active policing by Government agents. A law thus framed is almost certain to be a nullity because it is impossible in a country like this for Government ever to become so big that it can watch all offenders, apprehend and punish them.

Opportunity for the expansion of production, the development of new industries, the gainful employment of all of the idle, and the building up of home markets for all the produce of the farm are easily possible, if only we make up our minds as a united people to put an end to the restraints of trade which the conscience of the Nation denounces and then adopt a policy of government taxation designed to hold out rewards to those who have the energy, the brains, and the capital to develop the unmeasured resources of America.[60]

The basic cure, the successful law, is one that is automatic in its application, that depends for results not upon the punishment it inflicts after the fact but on the degree of respect it inspires in a prospective violator when the violation is contemplated. Jail and fines are penalties for individuals, not for large corporations. Loss of charter or restriction of the powers granted them by the people might better serve the 20th-century business.

[59] Testimony in "Administered Prices," hearings before the Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, 85th Cong., 2d sess., 1958, pt. 6, pp. 2887-2889.

[60] Radio speech over NBC "A Preliminary Report of the Monopoly Committee" (as chairman of the TNEC), July 25, 1939.

During most of the 19th century and in the Sherman Antitrust Act, the units of business to be kept competitive in economic behavior were assumed to be individual, owner-operated, local, independent firms: private enterprise. But the central fact of the 20th century is the giant corporation—

frequently a huge collective enterprise affecting the entire national community bound together with other enterprises and financial institutions by a variety of devices in industrial and commercial empires.

The task of democracy is to preserve the freedom and independence of the individual in this economic and political complexity and the obvious first step is to differentiate between the economic organizations which are essentially national in scope and those which are essentially local and at the same time definitely and clearly to fix their powers, responsibilities, and duties. The simple way to do this is to provide a national rule for the national corporations that carry on national commerce.

Some of those who have opposed the proposal have pointed out that the respective States have a complete legal right to regulate the activity within their borders of corporations created by other States. The right exists but has seldom been exercised. Indeed, in the nature of things, it cannot be successfully exercised because so much business is essentially national in scope and the economic power of the corporations which carry it on so great that individual States fear to place themselves at a possible disadvantage by imposing requirements which other States would not lay down. The result has been that we have witnessed in America the steady progress of centralism—centralism in business, centralism in labor, centralism in agriculture, centralism in Government. The very consequence which it was feared would follow from a system of Federal charters or licenses for corporations engaged in interstate and foreign commerce has proceeded from the failure to adopt that formula, and simultaneously, with the development of centralism the economic impotence of the States and of local communities has become more and more striking.

The principal instrument of the concentration of economic power and wealth has been the corporate charter with unlimited powers—charters which afforded a detour around every principle of fiduciary responsibility; charters which permitted promoters and managers to use the property of others for their own enrichment to the detriment of the real owners; charters which made possible the violation of law without personal liability; charters which omitted every safeguard of individual and public welfare which commonsense and experience alike have taught are necessary. So long as those who want to voyage at will upon the seas of interstate and foreign commerce without responsibility to the public may obtain unlimited charters from the States, there is no efficient means of safeguarding the general welfare.[61]

Passed by an 8-to-4 vote of the TNEC, the proposal that supplementary Federal licenses be required of all corporations engaged in interstate commerce has been championed by Senator O'Mahoney in every session of Congress. He has introduced a Federal licensing bill numerous times, and repeatedly reminded this generation of the long and distinguished list of experts on antitrust policy who have strongly advocated Federal incorporation as a means of eliminating State charter mongering. The Commission on Industrial Inquiry in 1899 unanimously recommended it,[62] as did James R. Garfield in 1904 as Commissioner of Corporations.[63] So did President Theodore Roosevelt, while President William Howard Taft made it the topic of a special message to Congress.[64] It is one of the main reforms urged in eco-

[61] "Final Report and Recommendations of the Temporary National Economic Committee," S. Doc. No. 35, 77th Cong., 1st sess., Government Printing Office, Washington, D.C., 1941, pp. 28-29.
[62] "Final Report of the Industrial Commission," H. Doc. No. 380, 57th Cong., 1st sess., Government Printing Office, Washington, D.C., 1902.
[63] "Report of the Commissioner of Corporations," Washington, D.C., 1904, pp. 47, 56.
[64] "Messages and Papers of the Presidents," vol. 15, pp. 7449-7458.

nomic investigations of antitrust policy published by the Brookings Institution [65] and the Twentieth Century Fund.[66]

4. ANTITRUST POLICY UNWORKABLE AND DETRIMENTAL

This point of view is in general characteristic of political, business, and academic opinion everywhere in the world, expecially so before World War II, except in the United States and other countries with Anglo-Saxon common law traditions. Even in the British Commonwealth, the Low Countries and Scandinavia little reliance was placed on antitrust policy for protection against monopoly. They had more faith in low tariffs, cooperatives, government competition, and public ownership. As for Latin America, Asia, Africa, Russia, and other predominantly agricultural areas, industrial and financial monopoly was seen predominantly as a foreign capitalist menace, as instruments of imperialism and colonialism, against which small domestic businesses had to combine their strength.

Even in the United States this argument was used to push through the Webb-Pomerene Act, German cartels serving as the foreign ogre. But there have always been groups who regarded antitrust policy as unworkable and detrimental to them. That is how exemptions were obtained by retail druggists, farmers, railroads, banks, insurance companies, trade unions, shipping lines, etc. There has always been a large segment of business that regarded the antitrust laws as injurious or at best a necessary evil.

The NRA interlude

General opposition, however, reached its peak in the late twenties and early thirties, though even before that time there unquestionably were a large number of businessmen who shared the view of Justice Holmes that "the Sherman Act is a humbug based on economic ignorance and incompetence."[67] Opposition revealed itself in nonenforcement and "innocuous" associations seeking by uniform accounting systems, by price filing, etc., to "prevent demoralization of markets." Fair trade practice conferences were called by the Federal Trade Commission. Numerous codes of fair competition were formulated.

By 1933, advocacy of repeal of the antitrust laws had been so successfully promulgated by the U. S. Chamber of Commerce and other business groups that the New Deal launched a National Recovery Administration with code authorities for each industry enforcing rules of fair competition, devised by business, tolerated by organized labor provided section 7a legalizing collective bargaining was included, and criticized by a Consumers Advisory Board who represented nobody and could merely expostulate in futility. But the NRA experiment with business self-government revealed such utter disregard for small, local business and consumers and such ingenuity in packing the codes with monopolistic price fixing, production, and market control devices, that not only the public but most businessmen became alarmed and disgusted. There was little weeping when the

[65] "Government and Economic Life," the Brookings Institution, Washington, D.C., 1939, vol. I, pp. 78-80. See references there to other notable studies of such well-known authorities on antitrust policy as Myron W. Watkins, R. S. Stevens, and W. Z. Ripley.

[66] Survey of International Cartels and Domestic Monopoly," three volumes by George W. Stocking and Myron W. Watkins, "Monopoly and Free Enterprise," vol. 3, pp. 443, 446, 507-508.

[67] "Holmes-Pollock Letters," Harvard University Press, 1941, vol. 1, p. 143.

Supreme Court in 1935 in the *Schechter* or "sick chicken" case outlawed the statute.

Opposition to antitrust policy and enforcement did not cease. The National Association of Manufacturers continued to expound the virtues of competition and condemn monopoly, but found none of the latter except in government and the trade unions, meanwhile berating Thurman Arnold and subsequent heads of the Antitrust Division for tilting at windmills, seeing monopoly and cartels where none existed, though deliberately overlooking flagrant violations of the antitrust laws by organized labor.[68]

Resurgence of resistance to antitrust laws after World War II

The fact has already been noted that in 1952 the Business Advisory Council of the Department of Commerce issued a document with remarkable resemblance to the famous concluding report of the German Enqueteausschusz in 1926. They too look upon antitrust policy not only as badly confused but find that—

> the statutes, the court decisions, and the administrative rulings tend to impede effective competition as often as they protect it from abuse.[69]

As was noted above these views were reechoed in 1955 by the majority of the Attorney General's Committee To Study the Antitrust Laws.

More forthright has been the opposition of a small group of economists, typical of whom is Dr. Richard V. Gilbert who testified:

> I reach this conclusion only after careful consideration of alternatives. There are those who suggest that the way out of our dilemma is to break up the concentration of power, both on the business and labor side, to atomize our economic structure and return to that never-never land where competition flourishes, pure and free. This cannot be a practical course. Two generations of experience with the the antitrust approach have left us with imperceptible progress along these lines. What is more important, these concentrations of economic power, a triumph of our organizational genius, are the very basis of our economic strength. It is no accident that in time of war, government turns automatically to the largest of our economic units to secure the effort and performance it requires. Mobilization would be simply unthinkable on any other basis.[70]

A distinguished British economist, Sir Henry Clay, supports this stand vigorously. In his view, even the mild measures against foreign cartels recommended by the monopolies commission are ill advised since cartel stabilization usually occurs in fast-growing, highly capitalized industries prone to market demoralization. Furthermore, why curtail the collective activities of employers so long as labor unions go scot free? Moreover British industries never go so far as to eliminate competition entirely. By their self-control their collective agreements tend to safeguard stable production and employment more than unhampered competition.[71]

No summary is needed. Disagreement among observers in evaluation of antitrust policy varies by infinite gradations from those who consider it beneficial "as is" to those who find antitrust policy of any sort unworkable, useless, and detrimental. All groups assume that there is a relationship of antitrust policy to economic growth, employment, and price levels and that it is sufficiently measurable to warrant evaluation. That is the question to which we now turn.

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[68] See Francis X. Sutton et al., "The American Business Creed," Harvard University Press, 1956, pp. 165–168.

[69] "Effective Competition," op. cit., p. 16.

[70] Testimony in "The Relationship of Prices to Economic Stability and Growth," joint committee print, 85th Cong., 2d sess., Oct. 31, 1958, p. 228.

[71] See his article, "The Campaign against Monopoly and Restrictive Practices," in Lloyds Bank Review, vol. 24, April 1952, p. 14.

III. Is the Relation of Antitrust Policy to Economic Growth, Employment, and Price Levels Measurable?

In antitrust literature three types of criteria are ordinarily used to measure the impact of antitrust action and policy, structural tests,[72] changes in conduct, and performance tests. Economic growth, employment, and price behavior fall wholly in the realm of performance tests.

But such tests of social performance may be impossible to apply, and if successful lead to pervasive government control, even if the data required be limited to production—economic growth—employment, and consumer effort commanded—exchange value or purchasing power in buying other goods. These have been called the "real or physical tests of social performance."[73]

There are not only the well-known statistical difficulties in making reliable measurements of production, employment, and prices, even for particular products, on an industry and nation-wide basis. But there are enormous gaps in data on physical output and capacity, on unit wage costs, and on realized sales prices for the varying product-mix of particular firms. Yet such data are imperative if one is to assess the impact of antitrust policy on performance in relevant markets and make trustworthy approximations of the regional, functional, and product parameters encompassing the mix of economic activities tied together by the more significant elasticities and cross-elasticities of demand and supply.

The amount of information required as shown by the record of the *Cement* case [74] of 1948 and the *Pillsbury* case still in litigation may run as high as 7,000 to 10,000 pages. To set up a Bureau of Corporations with a Division of Industrial Economics which, as a matter of daily routine on a corporation or enterprise basis, would keep on file the substantial amount of authenticated information needed to keep track currently how important firms with anticompetitive potential are meeting performance tests, would intolerably compound and extend to all firms the difficulties of providing governmental access to internal business records, of legal jockeying, and of cost burdens now incurred in litigated cases.

Emphasis on "all the conditions in the market" as recommended by the Business Advisory Committee in its manifesto on "Effective Competition"[75] and advocated by the majority of the Attorney

[72] For nearly unanimous agreement that antitrust policy had failed on one of these tests: to increase the area of free competitive enterprise or decrease the proportion monopolistically affected see American Economic Review, "The Effectiveness of the Federal Antitrust Laws: A Symposium," vol. XXXIX, No. 3, June 1939, pp. 689 ff.

[73] See my "Measurement of the Social Performance of Business," Temporary National Economic Committee, Monograph No. 7, Washington, 1940, p. 3. I found existing data grossly inadequate for satisfactory measurement purposes but mistakenly argued the necessity and advisability of obtaining such figures.

[74] *F.T.C.* v. *Cement Institute*, 333 U.S. 683 (1948); also FTC docket 6000, *In the matter of the Pillsbury Mills, Inc.*

[75] "Effective Competition," op. cit., p. 17. "The first procedural necessity is to require that practical business and economic facts be considered and relied upon under the rule of reason * * *. Weight shall be given to all the conditions in the market under discussion and the effect these conditions have had with relation to the following relevant, but not exclusive, tests of public interest:

Alternatives available to customers or sellers;
Volume of production or services;
Quality of the services or goods;
Number of people benefited;
Incentives to entrepreneurs;
Efficiency and economy in manufacturing or distribution;
The tendency to progress in technical development;
Prices to customers and suppliers;
Conditions favorable to the public interest in maintaining American investments abroad and in defending the country from aggression;
The tendency to conserve the country's natural resources;
Benefits to the public interest assuming the relief requested by the Government in the proceedings."

General's Committee To Study the Antitrust Laws,[76] may in fact be a disingenuous device for de facto emasculation of antitrust effectiveness. By bogging down enforcement personnel and exhausting meager antitrust appropriations, localized "containment" achieves national immunity. Legal victories, when obtained, are Pyrrhic or, if easy, are trivial.

DIRECT PERFORMANCE TESTS NOT MEASURABLE

Prof. Corwin D. Edwards, in a penetrating analysis, has pointed out the further difficulty of adding the results when obtained. How weigh against the fact that an illegal patent monopoly has excluded independent concerns from the market such high performance test scores as unusually vigorous research, steady employment at higher than average wages, and high rates of expansion? He states:

> Such a procedure would be as unworkable as to decide whether a driver is permitted to run a red light in traffic by determining whether, on balance, he were a good or bad citizen. * * * It is hard to see how the social philosophizing inherent in such appraisals could be reduced to the form of evidence.[77]

On another occasion he wrote:

> Even the managers do not know how their potential and their performance might have changed under competitive pressure. Proof that power has not been abused and opportunities have not been lost requires something more than evidence in a changing world that a powerful concern has expanded its output, or incorporated some new technology in its products or processes, or found that lower prices were more profitable, or found that it could no longer obtain its former rate of profit.[78]

Comes now the ultimate question: Would the performance not merely of defendant companies and industries, but of the American economy have been perceptibly different had the antitrust agencies never functioned? Would economic growth have been slower, employment lower and price inflation greater?

A representative answer in the affirmative is given by Professor John P. Miller of Yale—

> antitrust policies have played an important role in promoting high standards of living and growth in the American economy * * * [They] play an important role in channeling our aggressive entreprenecurial talents in constructive directions.[79]

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[76] In the words of Senator Kefauver opening the hearings on "Current Antitrust Problems," op. cit., p. 8:
"* * * the committee sets forth a large number of standards or tests to be used in determining whether the law has been violated. I have counted 41 such tests. They are contained on p. 125 of that report, each of which requires the assembling and analysis of vast bodies of economic data * * *. I doubt, if they were adopted, whether any case would be finally decided within the lifetime of anyone present.
"These gentlemen are masters of indirection. They do not appear in public hearings and make a forthright presentation of their views. Instead, they stay behind the scenes, endeavoring by indirect means, first, to keep the law from being enacted, and then, if that fails, from being effectively enforced. Speaking for myself as one of the sponsors of the Antimerger Act of 1950, may I take this opportunity of stating most emphatically that it was not the intent of Congress that the law be administered in accordance with the standards set forth by the report of the majority of the Attorney General's committee."

[77] Corwin D. Edwards, "Public Policy and Business Size," in the Journal of Business of the University of Chicago, vol. XXIV, No. 4, October 1951, pp. 285, 286.

[78] Corwin D. Edwards, "Big Business and the Policy of Competition." Western Reserve University, Cleveland, 1956, p. 71. See also pp. 116–117, where Dr. Edwards shows this in the famous case of *U.S. v. Hartford Empire Co.* (323 U.S. 386). There occurred in the glass industry in the period from 1928 to 1938, a 60-percent increase in capacity with small enterprises increasing their share of the market pie from 20 to 32 percent; a 40-percent increase in wages per hour with a 20-percent reduction in the length of the workweek; and a 10- to 34-percent decline in prices of various products. Yet the repeal of prohibition might explain the increase in capacity, the New Deal and unions the increase in wages, and the big depression the price decline. "The guilt of the defendants would then have depended upon the court's conclusion as to the relative effects of the depression, repeal of prohibition, labor legislation, and the allocation of patent licenses in furthering or retarding the industry's economic performance."

[79] Testimony, Sept. 23, 1959, before the Joint Economic Committee, hearings, "Employment, Growth, and Price Levels," pt. 7, "The Effects of Monopolistic and Quasi-Monopolistic Practices," pp. 2123–2124.

No indication is given of inductive evidence supporting this opinion. He elaborated his views as follows:

Two important aspects of antitrust policy as currently enforced do much to encourage growth. The first is the insistence that entry to markets shall not be impeded by artificial restraints. The Sherman and Clayton Acts have both played an important part in this aspect of antitrust. The second is the insistence that each firm must make its own decisions independently, i.e., that there shall be no conspiracies or cartel arrangements. This latter policy was early established under section 1 of the Sherman Act and has been reaffirmed under section 5 of the Federal Trade Commission Act.

By insisting that there shall be no artificial restraints on entry into any market either by a single firm or group of firms acting in concert, the Sherman Act has served to reduce the risks faced by new firms or by existing firms penetrating new markets. By preventing boycotts or the rigid classification of accepted customers or sources of supply, antitrust policy has encouraged the development of new products, new processes and new methods of distribution. By insisting that firms must make their decisions independently, antitrust policy does not insist that firms behave like "perfect competitors" in the economic sense. But it does prevent firms from seeking continuity and security by price fixing arrangements, production control, market allocation etc. Thwarted in its search for security in these directions, a firm must insure its continuity by other means such as the development of new or improved products, lower costs, lower prices, sales effort, etc. The antitrust laws, then, serve to keep the channels of trade open and channel entrepreneurial talents into competitive efforts which are on the whole of a constructive sort rather than into conspiracies designed to reduce business risks by elimination of competition.

INDIRECT MEASUREMENT VIA IMPACT ON STRUCTURE

On the other hand, Prof. Donald Dewey in his recent volume on Monopoly in Economics and Law summarizes "The Achievements of Antitrust Policy" as follows:

As yet the evidence that would permit direct answers to these questions which would carry conviction has not yet been assembled. Given the difficulty of defining—much less measuring—economic welfare and the problems inherent in any effort to apportion credit for economic progress, it is unlikely that any amount of empirical work will yield answers that satisfy even the fraternity of specialists. The impact of antitrust policy on economic performance we must infer from its impact (if any) on the structure of the American economy.[80]

The discernible impact which, in his excellent analysis of available inductive studies, Professor Dewey does find is substantively slight. In a handful of industries—

the threat of prosecution has succeeded in discouraging—and sometimes eliminating—overt collusion, especially income-pooling agreements.[81]

Businessmen today, as in Adam Smith's experience "still view collusion as a normal method of doing business." The slightly decreased ineffectiveness of antitrust policy in recent decades has "led to special treatment for politically powerful or obviously unfortunate industries" both at the Federal level (railroads, trucking, inland waterways, airlines, banking, pipelines, farmer cooperatives, and shipping) and at State levels. "The supreme achievement of antitrust policy," in Dewey's view, is "the rule that the courts, unless directed otherwise by the legislature, will not enforce a private agreement that restricts competition." [82] Neither will the British courts nor have they since time immemorial.

[80] Donald Dewey, "Monopoly in Economics and Law," Rand McNally & Co., Chicago, 1959, p. 302.
[81] This finding is corroborated in a two-volume survey made by Dr. Simon N. Whitney entitled "Antitrust Policies: American Experience in Twenty Industries," the Twentieth Century Fund, New York, 1958, especially ch. 23, "The Antitrust Laws in Perspective" where he lists the three contributions of American antitrust laws (pp. 436-427) as (1) setting up "a barrier against the cartelizing of American industry along European lines," (2) fewer "attempts to create monopolies, by merger or otherwise," and (3) helping "maintain both equality of opportunity and freedom of entry in industry."
[82] Dewey, op. cit., pp. 304-305.

So far as "trust busting" is concerned, Professor Dewey finds that—

> the main impact of antitrust policy on the structure of the economy has probably resulted from its influence on two industries—oil and steel.[83] The effort at trust busting has had so little success because it seeks a deliberate unsettling of property rights that offends the conservative bias of the courts * * * judges strive to behave in a judicious manner. The road to trust busting on a grand scale must lie through the congressional committee and Federal bureau, not through the suit in equity. This is tantamount to saying that trust busting probably has little future as an antimonopoly measure in the United States.[84]

Dr. Whitney's survey underscores these conclusions:

> No evidence was found that industries in which these Pyrrhic victories occurred, or others containing big corporations that might seem ripe for dissolution under these principles, operate less efficiently for the public welfare than industries composed of many small firms. Nor does the authoritative book edited by Adams himself (Prof. Walter Adams of Michigan State University), "The Structure of American industry" show that the performance of cotton textiles, bituminous coal, residential construction, or agriculture (four examples presented of industries with small firms) has been superior, from the consumer's standpoint, to that of the seven oligopoly-type industries it treats.[85]

In short, if there is a relation between antitrust policy and economic growth, employment, and price levels, it is indirect, and it may be slight. Though the courts have been distinguishing between so-called good and bad trusts since 1893 on alleged grounds of economic performance, though scores of hearings and hundreds of persons from all walks of life have expressed judgments and made recommendations based on asserted performance results, the efforts of enforcement agencies have stopped with legal victories without followthrough to see whether business or economic performance had changed. Frequently as Dr. Whitney's study of 20 industries shows, the only change was one of form, not substance.

There is no convincingly significant difference in performance between industries even where dissolution suits were brought and those exempted from antitrust, no difference between periods of laxity in enforcement compared with trust-busting era's, no difference between performance of defendants and those not involved. Performance tests, while valid items in a social audit of business, seem thus far to have proved nothing so far as effectiveness of antitrust policy is concerned. Nor in view of grossly inadequate data and considering the many forces other than antitrust policy impinging on social performance, has a method yet been found for clearly identifying and measuring the net impact of antitrust policy. Indeed, it may well be, in the interest of optimum privacy of business decisionmaking from detailed and continuous Government investigation and intervention, that such systematic measurements of social performance should not even be tried.

IV. The Relation of Antitrust Policy to Economic Growth

Economic growth ordinarily is defined as increasing annual capacity to produce sustainably larger volumes of socially desired goods and services. Most important, since labor costs constitute some 68 to 70 percent of total outlays, is the necessity for continually increasing the skills and capacities, technical, scientific, and spiritual, of labor and

[83] Ibid., p. 306. Dr. Whitney disagrees. He concedes that dissolution in oil, tobacco, and explosives may have been beneficial, but maintains that failure of dissolution in steel, tin cans, farm machinery, and aluminum did not aid them to develop differently from the first three (Whitney, op. cit., p. 390).
[84] Ibid., p. 308.
[85] Simon N. Whitney, "Antitrust Policies," op. cit., vol. II, p. 392.

management. The wealth of a nation, as Adam Smith stated in the first sentence of his famous book, consists in the annual product of its labor. Able, alert, innovative human resources will maximize the yield of all resources and means of production, natural or manmade. With superb human stuff, and an abundant endowment of resources, the creation of the most useful plant and equipment and the savings equal to such investment, the full use of technological change and advancement, etc. as was so strikingly demonstrated postwar in devastated Germany, Russia, and Japan, are readily accomplished. What is critical is the quality of management, the quality of the labor force, broad diffusion of education throughout the entire population, specialization and sufficient flexibility and mobility to maximize total competitive returns and equalize marginal productivity in all uses.[86]

It is trite to point out that political, social, and economic backgrounds vary between countries. So do growth rates. Between 1950 and 1955 the average annual percentage of growth in total real gross national product was 10 percent in Germany, 8 percent in Japan, 7 percent in Russia and Austria, 6 percent in Greece, Turkey, and Italy, 5 percent in the Netherlands and Canada, and 4 percent in France, Norway, Belgium, and the United States.[87]

Authoritative computations of output per head of population, with 1913 taken as the base of comparison (1913=100), show the figure for Russia to be 21 in 1870, increasing to 368 in 1955. That for the United States is 29 in 1870 increasing to 264 in 1955.[88] Yet obviously the Russian system differs drastically from that in the United States in which, according to the Committee for Economic Development—

This universal drive to expansion in search of profit, animating each one of millions of economic teams, has undoubtedly been the great generating force for the accumulative economic growth that has taken place in the whole society.[89]

Unfortunately, words such as "great" have no definite quantitative meaning. In the period 1953–57 real gross national product here increased at an average annual rate of 2.5 percent while "Western European countries have progressed much more rapidly in their growth rates than the United States." [90] How can one assess, among all the forces that make for economic growth, the fraction of total growth ascribable to antitrust policy? Would Europe have outdistanced the United States even more had it adopted a full fledged antitrust policy? Would Russia? Would it have been less? The same?

Where is the scientific evidence that supports such statements as "The only source of real growth in our national economy is saving and the investment of savings in capital goods"? [91] Especially so since throughout the history of business cycles, the classical capital goods decline or depression, stopping or paralyzing economic growth, is one almost invariably characterized by burdensome inventories and

[86] See the excellent analysis in "Economic Growth in the United States, Its Past and Future," a statement on national policy by the Research and Policy Committee of the Committee for Economic Development, New York, 1958, pp. 23–26.

[87] Ibid., p. 57.

[88] Prof. G. Warren Nutter in "Comparisons of the United States and Soviet Economies," joint committee print, 86th Cong., 1st sess., Government Printing Office, Washington: 1959, pt. I, p. 97.

[89] "Economic Growth in the United States," op. cit., p. 20. Italic and boldfaced type in the original.

[90] "1959 Joint Economic Report," S. Rept. 98, 86th Cong., 1st sess., Government Printing Office, Washington, 1959, p. 5.

[91] George I. Conklin, Jr., vice chairman (finance), the Guardian Life Insurance Co. of America, testifying on "Employment, Growth, and Price Levels," hearings before the Joint Economic Committee, 86th Cong., 1st sess., Washington, 1959, pt. 6A, p. 1354, also p. 1343 and elsewhere.

excess capacity in plant and equipment. Where can one factually verify that "the smaller the Government and the less it intervenes the greater the prospects for healthy economic growth"? [92]

Certainly the authoritative studies by Kendrick and Fabricant of the National Bureau of Economic Research show no such correlation. Prior to World War I, the era of "smaller Government," rates of increase in productivity, however they are measured, were considerably lower than in recent decades. For output per unit of labor and capital combined, the rate of growth since World War I has been as much as 50 percent higher than during the earlier period.

> It has been much higher in some regulated industries such as communications and transportation than in manufacturing and agriculture.[93]

These eminent scholars were able to measure the direct effects on output, of increase in labor time and increase in volume of tangible capital.[94] What about the effect, direct or indirect, on economic growth, of antitrust policy?

Under productivity, they point out, are lumped together the indirect effects of increase in society's intangible capital including improvements in basic science, technology, business administration, education and training; the economies resulting from increased specialization within and between industries; the improvement (or falling off) of efficiency in the use of resources resulting from change in the degree of competition, in volume, direction, and character of governmental subsidies, in the nature of the tax system, and in other Government activities and regulations; and the greater (or smaller) benefits resulting from change in the volume, character, and freedom of commerce among nations.

Our "simple calculation" Dr. Fabricant states—

> does no more than suggest the high relative importance of the factors grouped under productivity. But this is significant. It is a measure of our ignorance concerning the causes of economic growth and an indication of where we need to concentrate our attention.[95]

V. The Relation of Antitrust Policy to "Full" Employment

The difficulties of assessing the relation of antitrust policy to high-level employment, however defined, are similar to those already encountered in connection with economic growth. Employment, however measured, is a resultant of many interacting forces. The relation of antitrust policy, if any, to employment is indirect and as yet has never been measured. In fact, in scientific discussions, employment and unemployment problems seem to afflict all nations, with or without antitrust laws.

Careful analysis of employment history, national and international, such as those who appeared before the Joint Economic Committee [96]

[92] Wall Street Journal, editorial on "The Growth Fetish," Sept. 30, 1959, p. 12.

[93] See Solomon Fabricant, "Basic Facts on Productivity Change," occasional paper 63, National Bureau of Economic Research, Inc., New York, 1958, pp. 10, 12, 24.

[94] See John W. Kendrick, "Productivity Trends: Capital and Labor," occasional paper 53, National Bureau of Economic Research, 1956. Also by the same author "Productivity, Costs and Prices" in "Wages, Prices, Profits and Productivity," the American Assembly, Columbia University, June 1959, pp. 37-59.

[95] See "Employment, Growth and Price Levels," hearings before the Joint Economic Committee, pt. 2, "Historical and Comparative Rates of Production, Productivity and Prices." Government Printing Office. Washington, 1959, p. 356.

[96] "Employment, Growth and Price Levels," hearings, pt. 3, "Historical and Comparative Rates of Labor Force, Employment and Unemployment," Joint Economic Committee, 86th Cong., 1st sess., Government Printing Office, Washington, 1959, especially the testimony of Dr. Ewan Clague (pp. 468-493), Prof. Clarence D. Long (pp. 555-566), and Stanley Lebergott (pp. 577-585).

have authoritatively documented the many forces affecting employment such as aggregate demand, especially during war and postwar recovery periods, exploration of new areas and resources, rapid technological advance, etc. None even mention the antitrust laws. All deplore the lack of adequate information [97] and note that longrun employment levels ranging from 96 to even 99 percent (Switzerland) of the labor force, ready, willing and able to work, have persisted in Western Europe and American countries for decades. Behind the Iron and Bamboo Curtains there is, according to official pronouncements, no unemployment problem at all—and no antitrust laws.

So far as measuring the forces that a priori allegedly affect cyclical deviations or unemployment, one of our foremost labor experts, Dr. Clarence D. Long, states:

> We are embarrassed by too many clues rather than not enough. There are many reasons why we have unemployment. Our existing knowledge merely tells us the story in a most general way and therefore leaves an enormous amount of room for any person to throw in his own set of prejudices. There is very little that the data enable us to say quantitatively about what part of the unemployment problem is caused by people pricing themselves out of the labor market, by insufficient demand, by declining industries, by depressed areas, by people being too old * * * unemployable * * * preferring to draw unemployment insurance—we just do not know quantitatively.[98]

Needless to say, many popular writers and representatives of business and labor suffer no such disability. To select one or more typical examples at random: a British correspondent writes—

> Trade unions in the free countries are guilty of holding up industrial expansion and increase in productivity. Restrictive practices prevent the increase of output to full capacity. Excessive wage demands generate inflation and force the authorities to resort to credit restrictions, causing thereby a setback in production.[99]

In similar vein, the president of American Motors Corp. states:

> The UAW's combined bargaining demands and the joint use of economic power accelerate the concentration of industry, shrink automobile employment, and prevent adequate labor-management cooperation * * *. The inherent economic conflict between the antitrust laws and the labor laws must be resolved if America is to survive.[1]

He recommended that in large corporations with more than 10,000 employees only the local union be permitted to bargain. Small unions in firms with less than 10,000 workers might be allowed to combine with unions in other similarly small firms for bargaining purposes.

An economist for a large Chicago bank sees—

> no good reason why labor should be exempt from the antitrust laws * * *. Featherbedding and other restrictive labor practices are highly detrimental to price flexibility as well as long-term growth.[2]

To which another eminent banker adds—

> unless the Government and the Congress have the courage to control the rapidly growing monopolistic powers of organized labor, further inflation is inevitable.[3]

[97] Ibid., pp. 470–472, 522, 523, 544–547.
[98] Ibid., p. 547.
[99] Paul Einzig "Trade Unions in the Free World Aid Soviet's Growth Rate," Commercial and Financial Chronicle, vol. 190, No. 5886, Oct. 1, 1959, p. 10 (1358).
[1] George Romney, "Administered Prices," op. cit., p. 2846.
[2] Beryl W. Sprinkel, "The Relationship of Prices to Economic Stability and Growth: Commentaries," Joint Economic Committee print, 85th Cong., 2d sess., Government Printing Office, Washington, 1958, p. 92.
[3] Marriner S. Eccles, "Employment, Growth and Price Levels, Part 1—The American Economy: Problems and Prospects," Joint Economic Committee, hearings, 86th Cong., 1st sess., Government Printing Office, Washington, D.C., 1959, p. 205.

To which Dr. Woodlief Thomas, Vice President of the Federal Reserve Board adds—

> The worst feature of administered prices and wages is not so much that they create inflation but that they tend to retard growth and to increase unemployment.

The fact is interesting that all such arguments have as a premise that antitrust policy is effective. To be sure, now only on employers, but, if extended to unions, it would prove similarly effective.

Identical attitudes prevailed in 1955 when the House Antimonopoly Subcommittee of the Judiciary Committee made its examination of the extent to which monopolistic and monopsonistic pressures were exercised by buyers and sellers of labor.[4] Representatives of the National Association of Manufacturers, the Chamber of Commerce of the United States and the American Farm Bureau Federation, on the one hand, alleged a "concentration of economic power unequaled in any other segment of our economy."[5] They listed as monopolistic practices of labor unions which should be banned by Federal and State law:

> Excessive concentration and misuse of economic power; certain types of payments to labor organizations; interference with use or installation of materials; featherbedding practices; and secondary boycotts.[6]

OLIGOPSONY IN LABOR MARKETS

On the other hand, economists have observed for nearly 200 years that an unwritten code seems to exist among employers, to oppose increases in wages. The founder of economic science, Adam Smith, observed in his "Wealth of Nations" in 1776 that:

> We rarely hear of the combinations of masters though frequently of those of workmen. But whoever imagined upon this account that masters rarely combine is as ignorant of the world as of the subject. Masters are always and everywhere in a sort of tacit, but constant and uniform combination, not to raise the wages of labor above their actual rate. To violate this combination is everywhere a most unpopular action, and a sort of reproach to a master upon his equals and labor. We seldom, indeed, hear of this combination, because it is the usual, and one may say, the natural state of things which nobody hears of.[7]

Modern scientific experts in the field of labor such as Prof. Richard A. Lester of Princeton agree. In his authoritative volume on the "Economics of Labor" he summarizes the views of dispassionate observers when he states (p. 100):

> What Adam Smith wrote in 1776 is still true * * *. Not only has there been concerted action on wages by members of trade associations or employer's associations, but there have been gentlemen's agreements not to spoil the market by bidding or competing with one another, and in some industries there seems to have been what might be called a practice of following the leader.

He refers here to industrywide bargaining, the pattern in existence in the steel industry since 1902 whereby the steel industry follows the wage and price changes set usually by the United States Steel Corp. For some types of labor in some areas, e.g., company towns, there is only one buyer of labor (monopsony). Highly widespread are labor markets where only a few buyers exist (oligopsony) as in the market for skilled auto workers.

[4] Hearings on "Current Antitrust Problems," op. cit., pp. 637, 638, 1658-1663, 1739, 1740, 1805-1812, 2143-2152.
[5] Ibid., p. 1786, testimony of Earl Bunting, vice president, National Association of Manufacturers.
[6] Ibid., p. 1663, testimony of Mr. Hoyt P. Steele, U.S. Chamber of Commerce.
[7] Adam Smith, "The Wealth of Nations," the Modern Library, New York, 1937, pp. 66, 67.

LABOR UNIONS AND THE ANTITRUST LAWS

This age-old dispute concerning labor monopoly versus employer monopsony and oligopsony in labor markets has played a substantial role in hundreds of antitrust cases in which labor unions have been defendants, in scores of congressional debates on numerous pieces of labor legislation and, in fact, wherever labor unions and collective bargaining are discussed.

The U.S. Chamber of Commerce testified:

> The combination of the Clayton and Norris-LaGuardia Acts has established a virtual immunity for labor unions in the area of monopolistic and abusive restraints from competition * * *.[8] Prosecution of labor unions have remained, except for one period at almost zero, and they are not generally attempted.[9]

Mr. Bunting of the NAM added—

> it must be recognized that labor unionism, by its very nature, is essentially monopolistic * * *. This monopoly power, it should be stressed, is exercised by the international organization—a combination of unions.[10]

In this he was seconded by Mr. Hoyt P. Steele, president of the U.S. Chamber of Commerce, who has such difficulty in finding monopoly in business as to testify—

> when the Aluminum Corp. was virtually the sole producer of aluminum in this country, I maintain that it was *not* a monopoly.[11]

Many seem to be oblivious to the long record of labor prosecutions under the antitrust laws. The second case brought up under the Sherman Act involved labor, and from then on a number of unions were prosecuted,[12] culminating in the notorious *Danbury Hatters'* case.[13]

In that case the Supreme Court decided that the Danbury local of the Hatters' Union had violated the Sherman Act. Its members and sympathizers were urged not to buy the products of the "antiunion" hat concern. As a result of prosecution and conviction, the entire funds of the union were confiscated. Since even these were insufficient to pay the fine, the homes and life savings of the individual members were seized to the extent necessary to pay the fine (later reimbursed to some extent by the AFL).

In response to this decision Congress, when it passed the Clayton Act in 1914, sought to give unions the right to exist by protecting purely organizational activities from the reach of antitrust laws. Section 6 of the Clayton Act declares that "the labor of a human being is not a commodity or article of commerce." It further provides that "nothing contained in the antitrust laws shall be construed to forbid the existence and operation" of labor unions—

> * * * or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

[8] Hearings on "Current Antitrust Problems," op. cit., p. 1659.
[9] Ibid., p. 1661; also p. 1679.
[10] Ibid., pp. 1786, 1794, 1810.
[11] Ibid., p. 1605.
[12] *Blindell* v. *Hagan*, 54 F. 40 (1893); *United States* v. *Workingmen's Amalgamated Council of New Orleans*, 54 F. 994; *United States* v. *Debs*, 64 Fed. 724 (1894), etc.
[13] *Loewe* v. *Lawlor*, 208 U.S. 274 (1908).

This provision was supplemented by a provision in section 20 of the Clayton Act barring issuance of injunctions by the Federal courts against strikes, boycotts or picketing—

> in any case between an employer and employees, or between employers and employees, or between employers, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment.

Despite this broad language, the Supreme Court held [14] that section 20 prohibited injunctions only in disputes between an employer and his own employees; and under this construction the Federal courts continued to enjoin secondary strikes and boycotts until the enactment of the Norris-La Guardia Act in 1932. This finally ended the issuance of labor injunctions in the Federal courts, except to the extent that Government-sought injunctions were restored by the Taft-Hartley Act.

In the next 20 years the Antitrust Division brought scores of successful cases against trade unions,[15] especially so when they entered into arrangements with employers or other parties whereby, as in the leading *Allen-Bradley* case,[16] contractors purchased and installed only that equipment which was made locally by manufacturers who in turn agreed to hire only union labor. Numerous bid depository systems were found, for example, in the building industry whereby contracts were allocated only to local contractors, dealers, etc. Outsiders were kept out by being unable to get labor, either local or outside, in pursuance of understandings between local contractors and the union. Picket lines kept out nonlocal labor. Such implementation by trade unions of local contractor-lumber-dealer-architect-banker-et al. types of "rings" is, of course, illegal. Similarly illegal are union actions aimed at directly fixing the kind or amount of products which may be used, produced or sold, their market price, the geographical area in which they may be used, produced or sold, or the number of firms which may engage in their production or distribution.

This, however is not enough so far as the National Association of Manufacturers and U.S. Chamber of Commerce are concerned. So strong is their faith in the effectiveness of the antitrust laws that they proposed through Mr. Steele that—

> National antitrust policy regarding labor unions be clearly enunciated so that both Federal and State courts may effectively apply their respective antitrust laws in the public interest and in the cause of equity for all groups in the economy.
>
> Such legislation should be clear and definite in identifying, as prohibited abuses of monopolistic activities of labor unions, such abuses of economic power as industrywide bargaining, when it assumes monopolistic proportions; secondary boycotts; featherbedding practices.
>
> We consider necessary the amendment of the Norris-La Guardia Act to limit the present exclusion of virtually all labor disputes from the operation of the antitrust laws, and to fix the standards of proof so that unions and union members who in fact engage in monopolistic practices may be held liable or restrained.

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[14] *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443 (1921).

[15] "From 1890 to 1946 defendants sentenced to prison numbered 198. Of these, 108 were members of labor unions, 75 were petty racketeers, 8 were wartime spies, and only 7 were businessmen. In the latter cases, moreover, the sentences were suspended. No important industrialist has ever spent a day in jail for violation of the Sherman Act." Clair Wilcox, "Public Policies Toward Business," Richard D. Irwin, Inc. Homewood, Ill., 1955, p. 245.

[16] *Allen-Bradley Company* v. *Local No. 3*, 325 U.S. 797 (1945). See also *U.S.* v. *Brims*, 272 U.S. 549 (1926) and *Hawaiian Tuna Packers* v. *International Longshoremen and Warehousemen's Union*, 72 F. Supp. 562 (D. Hawaii, 1947).

We urge that procedures be established to permit employers to make timely reports to appropriate Government officials concerning coercive practices by labor unions in order that such officials may secure court injunctions under the antitrust laws.[17]

All of these arguments and recommendations are, of course, hotly contested by representatives of organized labor. But they in turn advocate vigorous application of antitrust policy against giant corporations. They, too, appear to assume that there is an important if not measurable positive correlation between stronger antitrust policy and more jobs.[18]

In short, neither business nor labor present evidence. Both vociferously assert. No one knows. But the consensus of dispassionate observers is summarized as follows by an outstanding scholar in labor matters, Dean Charles C. Killingsworth, of Michigan State University:

The case against labor combinations is built primarily on false analogies between product markets and labor markets, between business enterprises and trade unions. Elimination of unions would not make labor markets competitive. Even on purely economic grounds the case against unionism is refuted by the facts, which disprove the contention that union policies are undermining our economy.

The conventional analysis of monopoly behavior simply cannot be applied to unions, because they do not "sell" labor, nor can they adjust the amount offered for sale as business monopolists are assumed to do, and in many other ways they cannot and do not behave as monopolies. Moreover, the available statistical evidence indicates that unions have had but little influence on the wage structure, that is, the comparative levels of wages in different plants and industries. Over the years for which statistical data are available the changes in wage structure that have occurred appear to be due much more to changes in productivity and product market conditions than to union pressure.

Congress on two occasions has enacted laws requiring that workers be given a chance to vote (by secret ballot) on strikes that union leaders proposed to call. * * * From the standpoint of preventing strikes, such laws were spectacular failures. In practically all cases where the required votes were taken, the workers voted overwhelmingly to support the union leaders. This failure reveals a fundamental error in analysis. The widely held theory that all union leaders are all-powerful dictators is really quite naive.

We cannot reasonably conclude that union government is in general so undemocratic as to be a menace to our political institutions. Quite the contrary; union government compares not unfavorably with our political government in this respect. The overall effect of unionism is to strengthen democratic institutions.

Collective bargaining strengthens the private enterprise system and democratic government as well.[19]

COMPLAINT AGAINST HIGH WAGES

Current debates and especially the perpetual drum-drum of giant business firms in the press that higher wages are the cause of inflation continue a line of argument centuries old. As Adam Smith observed in his great classic, even the level of wages in Britain in 1776, when unions did not exist, was represented as too high:

Our merchants and master-manufacturers complain much of the bad effects of high wages in raising the price, and thereby lessening the sale of their goods both at home and abroad. They say nothing concerning the bad effects of high

[17] Hearings on "Current Antitrust Problems," op. cit., p. 1663.

[18] Some writers even allege "a tacit collaboration between Big Business and Big Labor closely connected with rising prices, persistent unemployment, and slow economic growth * * * union captains perform different services for their corporate colonels, depending on the degree of concentration in the industry. The traditional antagonism between unions and management in oligopolistic or concentrated industries is disappearing. Conscious and unconscious collusion takes its place, lifting wages for some and prices (including stock prices) for others." Bernard D. Nossiter, "The Hidden Affair Between Big Business and Big Labor," Harper's Magazine, July 1959.

[19] Charles C. Killingsworth in the concluding chapter entitled "Organized Labor in a Free Enterprise of Economy" of a book edited by Walter Adams entitled "The Structure of American Industry," MacMillan, New York, 1954, pp. 572, 5645, 559, 563, 571.

profits. They are silent with regard to the pernicious effects of their own gains. They complain only of those of other people.[20]

Throughout the course of the 180 years since Adam Smith made this observation, "merchants and master-manufacturers" have not changed their tune. Yet precisely the countries with the highest wage rates—namely, Great Britain, the United States, and Western Europe, have accounted for more than 75 percent of all exports and almost 100 percent of the exports of manufactured goods made by high-wage but low-unit-cost labor.

Moreover, in the period since World War II, when such complaints about unions and their alleged cost-push leverage on price levels have been most angry, the rate of increase in wage rates, and in general wholesale and retail prices in the United States, insofar as these are a measure of inflation, has been less than in almost every other country in the world.[21]

To sum up: There is no convincing evidence that antitrust policy, whether in the period of rigorous enforcement against labor unions (1893–1930), nonenforcement (1930–38), or moderate enforcement (1938 to date), had any measurable impact, directly or indirectly on the level of employment. Nor is there revealed any identifiable relationship either in comparing particular industries, nonexempt versus exempt; in contrasting parts of the country such as the agricultural South (where trade unions were vigorously opposed with every legal and dubious device), with the industrial North; or in placing employment levels in countries with antitrust laws such as the United States side by side with countries elsewhere without them.

V. The Relation of Antitrust Policy to Price Levels

Inflation, deflation, varying consumer prices and fluctuating wholesale prices existed long before the Sherman Act, in countries with and without antitrust policies, during periods of vigorous enforcement and non-enforcement alike, hitting exempt and nonexempt industries with impartiality. As has happened before in this study, adequate data do not exist for inductive verification or computation of net coefficients of partial correlation or other measurements of the relation, if any, between antitrust policy and price levels.

Throughout recorded price history, in every country where money is used, prices and price levels have responded to a variety of forces—wars, heavy investment expenditures, variations in the supply of money and credit, borrowing by consumers, by homeowners, and by business, changes in the velocity of circulation of money or money substitutes, technological revolutions, scientific discoveries, public-debt-management policies, interest rates, fiscal, monetary and budget policies of central governments, etc.

Ordinarily, antitrust policy has no measurable relation to price movements. The enactment of the Sherman Act in 1890, for example, was followed by one of the most prolonged and rapid inflationary rises in prices in peacetime history. Suspension of antitrust policy during the late twenties and early thirties was attended by price collapse. However, may such a relationship have existed in the period 1955–58

[20] Adam Smith, "The Wealth of Nations," op. cit., p. 98.

[21] For a superb discussion of this entire problem see Clark Kerr "The Impact of Unions on the Levels of Wages" in "Wages, Prices, Profits and Productivity," op. cit., pp. 91–108 and Lloyd G. Reynolds "Wage Behavior and Inflation: An International View," ibid., pp. 109–136, especially table 1, p. 110.

in the United States? There are, as usual, those who are quite sure. Solomon Barkin, for example, testified:

> Oligopolistic administered prices are inflationary. * * * A considerable body of expert opinion now associates the appearance of "creeping inflation" with control of our price structure by large, dominant corporations who act as price leaders and set prices according to predetermined cost-plus formulas, reinforce their own market positions through advertising and other forms of nonprice competition, and whose huge profits have goaded unions on to seek high wage increases. * * * Most of the price increases in recent years have taken place in the fields dominated by large corporations which tend to administer their own prices.[22]

Equally certain is the representative of the United States Chamber of Commerce who testified:

> The term administered prices" * * * is devoid of meaning. The subject of administered prices is not, of itself, a proper concern of public policy nor a subject worthy of the attention of Congress. What about administered' wages? Many observers believe that the monopoly power of organized labor makes secular (or ratchet) inflation almost inevitable. Certainly, few people now deny that it constitutes a real long-run inflationary threat in one or more ways—as a generating force, as a conductor of inflation, or as an impediment to effective anti-inflationary monetary and fiscal policy.[23]

Both of these observers by implication emphasize the importance of antitrust policy with respect to recent "creeping inflation," Mr. Barkin urging vigorous antitrust action against giant corporations, Mr. Fackler against the monopoly power of organized labor. Neither, of course, finds any harmful monopoly power in the group he serves.

But in the measure one considers the entire economy, certainly in these matters vanishes. In his excellent study on Recent Inflation in the United States, Prof. Charles L. Schultze found:

> Inflation originates in excess demands in particular sectors and is spread to the rest of the economy by the cost mechanism. It is a characteristic of the resource allocation process in an economy with rigidities in its price structure.
>
> The rise in prices was not a result of overall excess of monetary demand; neither was it primarily caused by an autonomous upward push of wage rates. The largest part of the rise in total costs between 1955 and 1957 was accounted for not by an increase in wage costs but by the increase in salary and overhead costs. This increase in turn was associated with the investment boom. Business firms purchased large amounts of new equipment, hired extensive professional, technical, sales, and clerical staffs; and speeded up research and development. When output did not rise producers attempted to recapture at least some of these increased costs in higher prices. This "premature" recapture of fixed costs further accentuated the magnitude of the general price rise.[24]

Two experts from Yale University report similar findings from their study:

> Industrial monopoly or labor monopoly may of course have undesirable effects in many ways, but the evidence does not seem to suggest that they are at the heart of the problem of the rise in the price index. Although there are undoubtedly instances when industrial monopolies have forced prices up faster than costs, or have been insensitive to cost reductions, for the economy as a whole the price indexes would behave approximately as they do even if industrial monopoly were nonexistent. The behavior of price relative to cost, i.e., gross margin, in the concentrated industries does not appear to differ significantly from that found in competitive industries; in general for both types of industries prices move quite closely with costs.

[22] Solomon Barkin, Director of Research, Textile Workers Union of America in "The Relationship of Prices to Economic Stability and Growth: Commentaries," Joint Economic Committee Print, 85th Cong., 2d sess., Government Printing Office, Washington, 1958, p. 13.

[23] Walter D. Fackler, Assistant Director, Economic Research Department, U.S. Chamber of Commerce, Ibid., pp. 92, 94, 101.

[24] Charles L. Schultze Study Paper No. 1, Joint Economic Committee Print, 86th Cong., 1st sess., Government Printing Office, Washington, 1959, p. 2 of "Findings."

Neither does it appear that labor monopoly is responsible; price indexes rose not so much because of unwarranted wage increases but because there were insufficient productivity gains in the system. The productivity gain over the years might be even less if we were to insist that wage increases never exceed productivity gains, since rising labor costs today constitute one of the most effective spurs to productivity-increasing investment.[25]

None of these experts would attempt to solve the problem by strengthening the various antitrust laws or by applying them, in modified form perhaps, to labor as well as business. The school of "pulverizers," as Professor Schultze calls those who would risk a bit of depression as a remedy for "unsound" wage and price structures, never tell us which rises represent market response leading to "better" allocation of resources and which are "antisocial." At bottom their formula reduces to: Increases in my salary or in my prices are merited and healthy, yours are inflationary. It is the other fellow's power group that is monopolistic and needs to be "pulverized" both for its own good and for that of the American system of free enterprise.

These contentions and pressures may, but ordinarily do not, countervail one another. When necessitous and ignorant buyers such as defense officials with wide-open procurement purses dominate the market, wage rises become a pretext for contract price increases in a well-understood cooperative basketball advance of both prices and wages to higher quotations. And in times of depression, both groups also combine—internally to form cartels and externally to crusade for protective tariffs, Government contracts, bid depository systems, fair-trade laws, and suspension of antitrust policy enforcement or legislation. One of the chief arguments for the enactment of the National Recovery Act was that suspension of antitrust policy would be effective in eliminating the downward price and wage spirals and in unleashing cooperative self-help restoration of healthy, expanding markets for goods and labor.

While enforcement of antitrust policy is considered to have little potency against general inflation, suspension of antitrust laws is usually seized upon to help stop market demoralization. Exemption from antitrust policy is insisted upon as a remedy for cutthroat price competition, for example, by fair traders, retail druggists, exporters (Webb-Pomerene), oil consortiums (Near East and elsewhere), shipping and airline conferences, railways, dairymen, banks, and insurance companies.

ANTITRUST POLICY AND FARM PRICES

Several observers have ascribed considerable importance to antitrust policy as a lever for adjusting the dispersion between groups of prices; for example, the relation between the prices farmers pay and those they receive; or between the prices of purchased, semifabricated materials and finished products; or between the prices of firms who successfully manage a target profit rate and those of firms who cannot.

Farmers during those periods when farm prices fall and costs rise become ardent advocates of antitrust policy. They were the chief supporters of Granger legislation in the seventies, Interstate Commerce Act of 1887, of the Sherman Act, and of administrative and legislative antitrust activity since 1952.

[25] Richard Ruggles testimony before the Joint Economic Committee, Sept. 24, 1959, Hearings, "Employment, Growth, and Price Levels," pt. 7—The Effects of Monopolistic and Quasi-Monopolistic Practices, p. 2268.

The major price disparity worrying farmers is the spread between the prices of the crops they sell and those of the oil, tractors, and other manufactured goods they buy. Major farm organizations have frequently given testimony on this point.[26] In the words of Mr. Howard Dresbach, representing the National Council of Farm Cooperatives:

> The price squeeze in which farmers have been caught in recent years continues with increasing seriousness today. The farmers are selling their products in a market in which the competitive forces of supply and demand operate with maximum freedom; they have to buy their production supplies and necessities of life in a highly inflexible market characterized by rigid wage structures and other pricemaking factors.
>
> From 1940 to 1954 farmers' expenditures for fuel and lubrication for operating motorized equipment were up 281 percent; for fertilizer, up 350 percent; purchased manufactured feed up 282 percent; miscellaneous supplies and services, up 175 percent; depreciation has increased 356 percent; and total expenses have increased by 230 percent.
>
> On the other hand since 1940, net farm income has increased only 178 percent while nonfarm income has increased 263 percent. The farm income proportion of the national income has decreased 23.5 percent with a per capita income of $1,836.[27]

The chain of events,[28] is that in the agricultural or competitive sector prices fall but output is maintained. In the nonfarm sector prices are firm but output is adjusted as marketings fall. Farmers have no such alternative. They cannot prevent price collapse by cutting output, certainly not within a given month. The steel and automobile industries can reduce swollen inventories by throwing men out of jobs. They thus do consumers double injury, one in preventing price declines, the other in cutting off income of thousands of their employees. These in turn reduce their expenditures. The resulting downward spiral, unless broken, may persist for months or years. The necessary adjustments, when they occur, may be violent instead of gradual. Stable nonfarm prices unstabilize the whole economy.

The greater the rigid price area, the more severely do goods in the flexible price sector suffer the brunt of price disparity. On the other hand, if prices in the industrial segment of the economy were flexible, price declines there would moderate declines in production and employment. "If other industries as a whole reacted as does agriculture there could be no depression." [29]

Whence this cleavage in the price structure in the 1920's, the 1930's and the 1950's? The first was documented by Prof. Frederick C. Mills in a notable series of studies for the National Bureau of Economic Research. He concluded:

> Heavy investment in overhead, price regulation, monopolistic and semimonopolistic control, trade agreements, changed distribution methods, emphasis on nonprice factors, extensive valorization efforts—these and other influences tended to render prices a less sensitive agency for the transmission of economic intelligence.[30]

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[26] See, for example, "Hearings on Current Antitrust Problems," op. cit., pp. 158-161, 647-670, 1733, 1734.
[27] Ibid., pp. 1534, 1535.
[28] Ibid., pp. 311, 327, testimony of Senator Paul H. Douglas. See, for example, U.S. TNEC Monograph No. 23, "Agriculture and the National Economy," pp. 21-29.
[29] Willard L. Thorp, "Economic Problems in a Changing World" (Farrar & Rinehart, Inc., New York, 1939), p. 287.
[30] Prof. F. C. Mills, "Economic Tendencies in the United States," Aspects of Prewar and Postwar Changes. New York: National Bureau of Economic Research, 1952, pp. 546, 557.

The splitting apart of the price universe in the 1930's into two sectors, one of flexible prices, the other unchanging and "administered" became the topic of the well-known researches on "administered" prices by Dr. Gardiner Means of the Committee for Economic Development. It was extensively analyzed in various hearings and monographs by the Temporary National Economic Committee and elsewhere. Since World War II farm representatives have continued to point out that—

> In the United States in 1945 70 percent of all window glass was produced by three companies; 88 percent of all American communities had only one daily newspaper; three companies accounted for 90 percent of all automobile production; four companies accounted for 90 percent of all rubber tires; 20 major oil companies owned 80 percent of the Nation's refining capacity, manufactured two-thirds of the Nation's motor fuel, and accounted for 60 percent of the annual crude oil production; two corporations controlled the mixture required for the production of high priced gasoline.
>
> Turning to items which are necessary to farm operations we find that two companies produced 89 percent of all grain and rice binders, 77 percent of all corn planters, 75 percent of the mowers, 64 percent of the hay loaders, and 61 percent of the tractor plows. The farmer finds a still more monopolistic situation in regard to fertilizer. Two companies produced about half of the Nation's output of fixed nitrogen, and three companies about the same proportion of potash sold in the United States. Seven companies, including Tennessee Valley Authority, manufacture and sell the bulk of the phosphate which farmers buy. Four companies controlled 80 percent of all combines, 90 percent of all tractors and tractor tires, 92 percent of wheel-type steel tired tractors, 87 percent of all tractor cultivators drawn or mounted. Eight companies controlled 94.8 percent of all rubber tires and tubes, 82.1 percent of all agricultural machinery, 99.9 percent of all copper and 96.4 percent of all tin cans and tin ware. Three companies controlled 100 percent of the entire aluminum output of the Nation.
>
> It was found that a high degree of concentration existed at the processing, manufacturing, and distribution level of commodities which the farmer produced. Fifty-eight percent of all beef produced in the United States was processed by four meatpackers, 74 percent of the fresh mutton and lamb, and 45 percent of the fresh pork. The four largest producers of baked beans processed 58 percent of that product. The four largest producers of shortening processed 66 percent of that item. Four companies produced 65 percent of all refined sugar and 41 percent of all canned peaches.[31]

Thus, in the businesses which buy, process, and distribute agricultural products there has been undiminished concentration of economic control. Indicative are the numerous antitrust suits against corporate grocery chains, national baking companies, the meatpackers, flour millers, the large canning concerns, the dairy corporations and similar large organizations in nearly all branches of food processing and distribution. Control even in the textile industry is agglomerating into the hands of giant firms during the current wave of mergers.[32]

This tendency is of direct consequence to the farmer. Insofar as large-scale organization tends to promote processing and distributive efficiency and narrows the marketing spread for his products, the farmer benefits. But, at the same time, agriculture cannot be insensible to the danger of uncontrolled private monopoly in the marketing of its products.[33]

[31] Hearings on proposals for strengthening the Celler-Kefauver Antimerger Act, House Antitrust Subcommittee, Jan. 20, 1956, testimony of Mr. Angus McDonald.

[32] See report of the Antimonopoly Subcommittee of the House Committee on "The Merger Movement in the Textile Industry," and testimony of Solomon Barkin on Jan. 20, 1956. He is director of research of the Textile Workers Union.

[33] U.S. Temporary National Economic Committee final report, op. cit., p. 388. See especially TNEC Monograph No. 35, "Large-Scale Organization in the Food Industries," by Dr. A. C. Hoffman, and Monograph No. 23, "Agriculture and the Economic System," by Dr. Albert Meyers.

Even in the retail distribution of food, certain large organizations, notably the Great Atlantic & Pacific Tea Co.—

combined the most up-to-date and sophisticated monopoly methods of control including forcing price preferences, control of profits through manipulation of gross profit rates, coercive systematic discriminatory buying practices (this included preferential discounts, rebates, advertising allowances, pretended services, etc.), price wars, price agreements, false front activities, loss leaders, and in general abuses of combined vertical and horizontal integration.

To implement its buying activities in farm products, A. & P. organized a subsidiary buying company, the Atlantic Commission Co., in 1926. Atlantic Commission Co. used its tremendous buying power in the marketplace and its relationship with other buyers to depress and control the prices of farm commodities. It seized control of terminal markets, acted to demoralize produce markets and seize control of growers' cooperatives and other producers' associations. The A. & P. purchasing agency manipulated the market in such a way that farmers were forced to *give* them to the richest grocery chain in the country. The A. & P., because it was the largest unit in the vast food industry in the United States completely integrated horizontally and vertically, imposed unreasonable restraints on competition at all levels of the food industry, from farm to table.[34]

Farmers, as buyers, have in the past frequently testified with respect to the injury inflicted by monopoly in the things they buy. Witness scores of litigated antitrust cases and Federal Trade Commission orders against large firms producing steel,[35] fertilizers, farm machinery, oil, specialized feeds, veterinary supplies, construction materials,[36] household appliances, electric motors, paint, and other items that balloon farmers' expenses of operation.

Farmers, as sellers, have found themselves at the mercy of oligopsonies, collusion, and monopsony as proved in a series of court cases against handlers and processors of such farm crops as tobacco, livestock, grain, milk, cheese, potatoes, cottonseed oil, fruits, and truck crops.

The representatives of farmers point out that the farm price squeeze is particularly regressive. The top 1.9 percent who in 1953 received 25 percent of all Federal price support checks have an escape hatch. Even the top 22 percent who produced some 74 percent of the total value of farm products sold received 74 percent of the total price support as countervailing income. But the bottom 43 percent of the farmers producing only 6 percent of gross farm income were without recourse except to demand that their representatives make vigorous complaint and "pass a law."

Consequently, they hear advocated vigorous enforcement of the antitrust laws,[37] outlawing of cartels and cartel agreements,[38] strengthening of the Robinson-Patman Act,[39] strengthening consumer and farm cooperatives,[40] Federal licensing of corporations,[41] control of vertical mergers and integration,[42] strengthening present limitations on secondary boycotts and prohibition of industrywide and areawide bargaining.[43] Indeed, the American Farm Bureau Federation officially urged—

that Congress repeal both the Miller-Tydings amendment to the Sherman Act and the McGuire amendment to the Federal Trade Commission Act, thereby

[34] Hearings on current antitrust problems, op. cit., pp. 666–667.
[35] Ibid., pp. 645–648.
[36] Ibid., pp. 649–658, especially cement, hand tools, metal lath, and hardware.
[37] Ibid., pp. 331, 1548, 1738.
[38] Ibid., p. 1739.
[39] Ibid., pp. 670, 1536.
[40] Ibid., pp. 1538, 1549, 1738.
[41] Ibid., p. 1549.
[42] Ibid., p. 1548.
[43] Ibid., p. 1740.

subjecting resale-price maintenance, as other price-fixing practices, to those Federal antitrust controls which safeguard the public keeping the channels of distribution free.

The dangers inherent in such price squeezing of farmers and small business generally has been highlighted by numerous antitrust experts in and out of Congress. One of the best summaries of their views was presented by former Congressman Jerry Voorhis:

> Economic freedom is gradually being strangled by the cancer of sheer bigness. Monopolistic economic power is a menace to economic freedom and, ultimately, to political democracy and the institutions of a constitutional republic. This is true not because of deliberate nefarious design on anyone's part. It is true because the natural interest of monopolistic power is to maintain that power. Those in control of monopolistic power are driven to exert political influence and pressure for the simple reason that they have whole empires at stake, empires far larger than mere businesses, empires that are more wealthy than a dozen whole States in some instances.
>
> A nation is strong and the quality of its life is good just to the extent that its local communities are strong and the quality of their life vital. Communities cannot be either strong or vital or, indeed truly communities if most of their economic institutions are absentee-owned. Only local ownership by many people and effective control and participation in control by local people can keep communities strong and vital. The problem of monopoly, the problem of bigness, is not an economic problem alone. It is a political and social problem as well. It is a problem that affects every basic ideal of this country.[44]

TARGET-RETURN PRICING

Prof. Robert F. Lanzillotti on the basis of his extensive research work in the Brookings Institution has given important support to the findings of Dr. Gardiner Means that recent rises in wholesale prices were largely centered in industries where firms have the market power to create their own target rates of return via carefully ordered pricing. Examining the process of price formulation for some 50 individual products and product groups, Dr. Lanzillotti finds a rising stair-tread pricing pattern, one in which market-determined prices show no increase up, as market power is concentrated in fewer firms, to machinery, automobile, and steel prices showing increases from 20 to 30 percent. Target-return pricing based on the lump of business fallacy (lower prices will not increase demand) induces managements to magnify and escalate anticipated cost increases in their pricing decisions. His recommendations, accordingly, are to attack the market power at its source via antitrust action, especially focusing on recognized industry price leaders; to apply the conspiracy doctrine to management-labor relations, implicitly collusive; to restructure industries by Government assistance to new entry; and to require public hearings after announcement but in advance of an effective date of industrywide price increases.[45]

In the last recommendation Lanzillotti alined himself with numerous other economists who support Senator O'Mahoney's proposal, embodied in 1959 in his bill S. 215, to amend the antitrust laws by requiring that corporations, in industries so heavily concentrated that

[44] Ibid., p. 1549. For other statements stressing this most important point see Representative Emanuel Celler (p. 3), Senator Estes Kefauver (p. 46), Senator Joseph C. O'Mahoney (p. 158), Congressman Henry Reuss (p. 188), Senator Paul H. Douglas (p. 310), Sigmund Timbert (p. 413), Thorsten V. Kalijarvi (p. 685)–Leonard J. Emmerglick (p. 739), Robert Nathan (pp. 2036–2037), and Prof. Louis B. Schwartz (pp. 1889, 1890).

[45] See testimony of Dr. Robert F. Lanzillotti before the Joint Economic Committee, Sept. 24, 1959, hearings, "Employment, Growth, and Price Levels," pt. 7, "The Effects of Monopolistic and Quasi-Monopolistic Practices," pp. 2261–2262.

monopoly or the threat of monopoly is present, file advance notice and make public justification before effectuating price increases.

Summary of Findings

1. Giant enterprise, the most spectacular product of modern scientific, technological, transportation, metallurgical, chemical, electrical, corporate, and managerial revolutions, has grown irrevocably beyond the point of no return.

2. Such bigness in business has irresistibly generated big labor and big government. All are integral and vital to modern economic, political, and military survival.

3. The problems of monopoly power in such giant organizations, as they arise, will require other remedies than those now available under the antitrust laws.

4. Both atomization and surrender are impracticable. Centripetal forces in industries dominated by giant enterprise and giant unions derive integrated, persistent strength from the basic profit and efficiency drives of a free enterprise system. To atomize or pulverize big corporations or big unions into numerous small units, even if possible, would not restore consumer sovereignty nor give decisionmaking anonymity nor disperse economic power among myriads of firms in self-regulating geographic, functional, and product markets so dear to romantic memory. Power controls power. The governmental effort required would have to be both overwhelming and continuous. Like the beard that grows each day despite repeated shaving, the drive for private gain obtainable through monopolistic practices and "tilting" demand and supply cannot be stopped by occasional antitrust suits. Least of all can it be stopped by admonitions from on high.[46]

5. Experience abroad demonstrates that surrender to bigness may toboggan into monolithic totalitarianism, both rightwing and leftwing, with resultant, intolerable abridgments of human freedoms, both within such organizations and in the state. The primary victims are consumers, cooperative, small businesses, workers, and individual freedoms of occupation, of speech, and of person.

6. Antitrust policy in the United States may have helped, together with other more important safeguards, to preserve such freedoms, though, on balance, because of its total nonenforcement most of the time, including the NRA and war periods, and because the Government is nearly always overmatched in an unequal contest with giant enterprises, antitrust policy has not served to expand, broaden, or deepen these freedoms.

7. The area of free, competitive enterprise, the percent (estimated at 65 to 70 percent) of total economic activity not chronically afflicted by conspiracies in restraint of trade, by monopolizing, by attempts to monopolize, and by restrictive practices tending to lessen competition, may not have declined. It certainly has not increased.

[46] On this point see the testimony of Prof. Ben W. Lewis before the Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, hearings, "Administered Prices," pt. 9, "Administered Price Inflation: Alternative Public Policies," Government Printing Office, Washington: 1959, especially pp. 4712–4713, 4719.

"Profitseeking is not only acceptable to our way of life, it is indispensable. The logic of our economy will not permit the drive of private motivation to be blunted or its direction to be diffused by the conscience of individuals. Never, except in confusion, do we call upon individually felt social responsibility as a central organizing force * * *.

"Does it suggest confusion to admonish us as individuals to forgo economic satisfaction in order that all may be more fully satisfied. It certainly does. And it indicates confusion confounded, indeed it is the cream of the jest, to assume that anyone is listening."

8. While, theoretically, the effect of monopolistic activities is to misallocate resources, raise prices, and reduce innovation, productivity, employment, and consumption, and although these effects have occasionally been traceable in particular products or industries, the effects on the economy in general are lost, beyond unequivocal identification or measurement, in the welter of interactions of other more powerful economic forces.

9. Due to gross inadequacy of quantitative data, tests of social performance, where several variables are involved, yield unreliable and ambiguous results, so far as the economy as a whole is concerned. Many totalitarian countries, notably Nazi Germany and Russia, achieved rapid rates of economic growth, reduced unemployment to negligible proportions, and drastically controlled domestic inflation. These achievements they ascribe to the abolition of free competitive enterprise and the adoption of the one-industry one-firm principle, under which firms are united into an all-embracing corporation (hence the corporate state) or a compulsory kartell or committee [Soviet] headed by a government-appointed industrial leader (duce, fuhrer, or commissar).

10. The impact, if any, of antitrust policy on economic growth, employment, and price levels is indirect rather than direct. Consequently, treatises on economic development mention it only in passing while emphasizing such direct factors in economic growth as capital investment, managerial skills, technical "know-how," expanding transportation facilities, and rising consumer buying power. Employment theories similarly stress aggregative demand, access to training and education, occupational and regional mobility, and technological change. Among price theories one likewise finds many giving large space to discussions of monetary, fiscal, and budget policies, interest rates, commercial and mortgage borrowing, business confidence, even sunspots. But antitrust policy is ignored, presumably as de minimis. Whatever the impact of antitrust policy, it seems to be incapable of quantitative measurement; it is presumably small and indirect.

11. On the other hand, the dispersion of individual prices, as contrasted with their general level, has frequently been treated as being affected both directly and indirectly. Assistant Attorneys General in charge of the Antitrust Division, particularly when requesting appropriations, often point to specific direct effects of antitrust actions.[47] By implication, so do the farmers in their complaints during periods of price decline in farm products, that they are being squeezed by the manufacturers and distributors of the machinery, fertilizers, building materials, etc., which they buy. So, at times, do some of the "administered" price theorists, especially those urging that the Government immediately initiate antitrust suits with prayer for a 3–D remedy. Superficially, so do those who profess to see a "vicious trade union monopoly" except insofar as their recommendation of

[47] The most recent by Robert A. Bicks in testimony before the Joint Economic Committee on Sept. 22, 1959, who pointed to price reductions ranging from 15 to 40 percent as a result of a final judgment obtained on March 18, 1959, against six fur shearers (hardly a giant affair) in *United States* v. *Fur Shearers Guild, Inc., et. al.* He also argued that the consent judgment entered in *United States* v. *Eastman Kodak Company* in 1954 "expanded investment in a growing industry; introduced competition in price, quality, and service; and made a small but visible contribution to the growth and stability of the economy." The litigation against American and Continental Can Cos. in 1950, he alleged, led large consumers such as the California Packing Co. to install their own can-making machinery and intensified market rivalry such that "in 1958 and 1959, for the first time in 50 years, vigorous competition appeared between American and Continental."

"vigorous antitrust action" is merely an insincere advocacy of harrassment.

12. Difficult as is the measurement of the impact of antitrust policy in general upon growth, employment, and price levels in general, that of assessing the effectiveness of particular antitrust statutes is even more hazardous, especially so the differentiation of superficial legal change from basic alteration in economic practice.

13. The surface changes have been numerous. In a recent volume Prof. Joe S. Bain has summarized his findings thus:

> Overt practices and policies of predation and exclusion, such as might constitute offenses against section 1 of the Sherman Act have been * * * thoroughly discouraged, though by no means entirely eliminated.
>
> There has been a corresponding implied encouragement to leading or dominant firms in oligopolistic industries to pursue policies of "live and let live" with respect to smaller competitors * * *. Our antitrust policy has thus tended to favor oligopoly over monopoly, less concentrated oligopoly than might otherwise emerge, and oligopoly without express predatory and exclusionary barriers to entry.
>
> The general effect of our antitrust policy has not been directly to deter the development of relatively high oligopolistic concentration, or to reduce it when it does develop. [Recent actions nipping mergers in the bud such as the *Youngstown-Bethlehem Steel* case and the *Pabst-Blatz Brewery Company* case, could, if continued, modify this finding.]
>
> Only a very small proportion of potentially offending industries are ever brought to court.
>
> As to the relevant Clayton Act provisions, the enforcement of section 2 against price discrimination, although it has resulted in some noticeable revisions in market conduct, has not apparently had any significant direct effects on market structures. * * * Large buyers, previously advantaged by price discrimination in their favor, have usually found alternative ways of maintaining their advantages without violating the law.
>
> The supplemental and more specific prohibitions of the Clayton Act have not as yet added importantly to the total antitrust policy.
>
> The existing antitrust laws are considerably better than no such laws at all but they have fallen significantly short of the task of entirely or largely suppressing monopolistic performance tendencies in the economy.[48]

14. Antitrust policy has been conduct-oriented and sought to alter behavior by police action. It has cracked down vigorously on "conspiracies in restraint of trade," driven them underground, and stimulated the ingenuity of corporation lawyers to find new legal cloaks for restrictive practices. It has failed almost entirely with respect to giant enterprises and their "unreasonable market power." These, merely by their existence and market occupancy cause smaller competitors to dampen their competitive ardor, to acquiesce in "staying in their place" while the colossi exploit each new development and every new opportunity as it arises with all the advantages of a going concern with articulated know-how and exclusive market organization. Even governments by their procurement, research, exemption, and other policies have promoted monopoly. Regulatory agencies have abetted giant enterprises to the detriment of competition.

15. The basic problem, however, as Senator O'Mahoney has repeatedly pointed out, is one of restructuring power, of substituting positive for negative action, of establishing a national rule for national corporations.

The protection against encroachment upon individual liberties by State and Federal Governments now provided by procedural and substantive due process under the 5th and 14th amendments should

[48] Joe S. Bain, "Industrial Organization," John Wiley & Sons, Inc., New York, 1959, pp. 528-533.

be expanded to include similar protection against the creatures of such governments, notably the organs entrusted with economic power, the large corporate concentrates, the factory community. These "private governments" [48a] pose a problem for the United States today similar to that which embroiled the Thirteen States in the critical period under the Articles of Confederation. "Governing power, wherever located, should be subject to the fundamental constitutional limitation of due process of law." [49]

Competition in laxity among charter-mongering States has resulted in granting many corporations excessive legal powers to be exercised in areas far beyond State control. Though the Federal Government was specifically given constitutional power over interstate commerce, it has failed, except in the case of banking, to give affirmative guidance in protecting the public interest. By virtue of such Federal default State legislatures filled the gap. The corporations created by them in order to attain public ends through an appeal to private interests have in many instances become more powerful than the State itself.

The basic remedy is that—

> the corporation be required to make affirmative contributions to freedom and justice as our distinguishing values. The giant corporation is not the individual economic unit writ large, working through the invisible hand to maximize the welfare of all.[50]

It is a power unit having the ability and capacity to make decisions directly shaping the values of others, to impose deprivations and bestow rewards which control the behavior of others. Due to massive technological changes, individuals need protection against arbitrary applications of such massive economic power fully as much as against that of State and Federal Governments.

> The challenge in this is to find the legal—that is the constitutional—basis for a decisionmaking process that would be reasonably calculated to further the national interest. This is a greater challenge than that of dealing with the growth of corporate centers of power, for it calls for the preservation of democratic values imbedded in the Constitution while simultaneously devising means to transcend the shortcomings of mass democracy. It is no exaggeration to say that the American constitutional system will prosper or founder according to the manner in which this challenge is met.[51]

Until such time as the 5th and 14th amendments are expanded to provide for protection of individuals, not merely against governments but against creatures of government such as the corporation, Federal charters or supplementary licenses to State charters may be needed for firms engaged in interstate commerce,[52] affirmatively to describe unreasonable market power, to clarify the legal from the illegal, to provide incentives for voluntary spinoffs, and to prescribe definite penalties including revocation of the license to operate, much in the way licenses to drive motor vehicles are suspended or revoked in extreme instances of irresponsible driving.

[48a] For the relative size of these as compared with political units in the United States, see the appendix, p. 47.

[49] Prof. Arthur S. Miller, "Private Governments and the Constitution: An Occasional Paper on the Role of the Corporation in the Free Society," Fund for the Republic, Inc., Santa Barbara, Calif., 1959, p. 13.

[50] "The Corporation and the Economy," a report of a forum discussion, published by the Center for the Study of Democratic Institutions, Santa Barbara, Calif., 1959, pp. 7, 9.

[51] Arthur S. Miller, op. cit., p. 15.

[52] For weighty, authoritative skepticism on this point see Dr. E. G. Nourse, who testified: "I do not believe that it would be possible for the Congress so to amend the Antitrust Acts as to spell out standards of size or of price or other organizational practice that would give a clear and unambiguous pattern of enforceable competition among the large-scale units needed for operating efficiency." "Administered Prices," pt. 9, op. cit., p. 4707.

Admonitions, injunctions, cease-and-desist orders, and fines have proved to be only a fraction as effective in promoting safety on the highways as suspending the license to drive for variable periods of time. Giant firms, like giant trucks, ply the national highways of commerce. Their operators should be given a limited grant of powers retainable only by continued observance of minimum regulations as specified in their Federal charter or supplementary license. Some such measure, first recommended by the Commission on Industrial Inquiry in 1902, then by Presidents Theodore Roosevelt, Taft, and Wilson, recommended again by the Temporary National Economic Committee and by several outstanding scholars in antitrust matters, is fundamental if antitrust policy is to make a larger positive contribution to economic growth, high level employment, and stable price levels.

APPENDIX

Billionaire enterprises—Business versus governmental, ranked according to size

[Data are for 1958]

Business organization or political unit	Revenues [1]		Employees		Assets [2]	
	Amount (millions)	Rank	Number	Rank	Amount (millions)	Rank
Federal Government	$69,117	1	[3] 2,405,000	1	$262,056	1
General Motors Corp	9,522	2	521,000	3	6,891	29
Standard Oil Co. (New Jersey)	7,544	3	154,000	8	9,479	15
American Telephone & Telegraph Co	6,771	4	592,130	2	19,494	7
Great Atlantic & Pacific Tea Co	5,095	5	145,000	9	647	164
Ford Motor Co	4,130	6	142,076	10	2,962	60
General Electric Co	4,121	7	249,718	5	2,398	72
Sears, Roebuck & Co	[4] 3,721	8	205,609	7	[4] 2,036	84
United States Steel Corp	3,439	9	223,490	6	4,437	39
California	2,965	10	114,675	13	24,308	5
Metropolitan Life Assurance Co	2,911	11	57,554	38	16,282	9
Socony Mobile Oil Co	2,886	12	43,700	52	3,237	50
Gulf Oil Corp	2,769	13	56,000	41	3,430	47
Prudential Insurance Co. of America	2,648	14	58,277	35	14,732	12
Swift and Co	2,645	15	63,906	30	585	166
New York	2,558	16	117,474	12	36,686	2
New York City	2,542	17	254,094	4	22,450	6
Texas Company [5]	2,328	18	52,515	42	3,112	55
Safeway Stores	2,225	19	59,555	34	408	173
Chrysler Corp	2,165	20	95,846	16	1,338	124
Bethlehem Steel Corp	2,006	21	140,474	11	2,195	80
Westinghouse Electric Corp	1,896	22	114,652	14	1,412	117
Standard Oil Co. (Indiana)	1,864	23	46,033	48	2,769	64
Armour & Co	1,850	24	45,700	49	412	172
E. I. du Pont de Nemours	1,829	25	83,875	22	2,649	65
The Kroger Co	1,776	26	40,500	55	331	174
Boeing Airplane Co	1,712	27	92,878	18	605	165
Pennsylvania	1,680	28	80,790	23	[6] 16,131	10
Shell Oil Co	1,666	29	38,572	57	1,648	103
Standard Oil Co. (California)	1,559	30	38,395	58	2,457	70
General Dynamics Corp	1,511	31	92,900	17	651	163
Ohio	1,478	32	57,883	37	[7] 24,630	4
National Dairy Products	1,451	33	44,194	51	538	167
Equitable Life Assurance Society of the United States	1,436	34	11,511	114	9,208	17
Michigan	1,421	35	64,794	29	15,957	11
J. C. Penney	1,410	36	75,052	26	416	171
Goodyear Tire & Rubber Co	1,368	37	98,264	15	915	155
Union Carbide & Carbon	1,297	38	57,020	40	1,530	107
Procter & Gamble Co	1,295	39	20,700	93	756	157
Douglas Aircraft Co., Inc	1,210	40	71,925	27	473	168
United Aircraft Corp	1,202	41	57,315	39	470	169
Sinclair Oil Co	1,190	42	23,828	87	1,500	111
International Business Machines Corp	1,172	43	86,736	21	1,261	131
Radio Corp. of America	1,171	44	78,000	25	734	161
Texas	1,148	45	66,325	28	9,369	16
R. J. Reynolds Tobacco Co	1,147	46	13,135	110	743	158
Illinois	1,111	47	60,801	33	[6] 28,609	3
International Harvester	1,098	48	63,206	31	1,026	151
Montgomery Ward & Co., Inc	1,092	49	58,152	36	738	160
Continental Can Co., Inc	1,080	50	[8] 51,000	43	688	162
Phillips Petroleum Co	1,007	51	24,459	82	1,515	110
Firestone Tire & Rubber Co	1,062	52	[7] 88,323	20	738	159
American Can Co	1,037	53	49,567	45	837	156
Cities Service	1,015	54	[7] 18,100	98	1,288	129
General Foods Corp	1,009	55	21,012	92	443	170
New York Life Insurance Co	926	56	9,374	124	6,707	32
John Hancock Mutual Life Insurance Co	890	57	17,560	100	5,518	33
Pennsylvania RR. Co	844	58	80,727	24	2,963	59
Aetna Life Insurance Co	832	59	[9] 5,345	144	3,551	46
Aluminum Co. of America	753	60	44,281	50	1,337	125
New York Central Railroad Co	740	61	61,678	32	2,603	67
Massachusetts	691	62	39,498	56	8,872	19
Washington	690	63	29,944	69	4,451	38

See footnotes at end of table, p. 49.

Billionaire enterprises—Business versus governmental, ranked according to size—Con.

[Data are for 1958]

Business organization or political unit	Revenues [1]		Employees		Assets [2]	
	Amount (millions)	Rank	Number	Rank	Amount (millions)	Rank
Southern Pacific Co	$649	64	47,034	47	$2,292	76
Louisiana	647	65	40,517	54	[7] 3,134	53
New Jersey	638	66	32,597	66	8,110	22
Florida	622	67	36,051	63	9,200	18
Atcheson, Topeka & Santa Fe Ry	595	68	49,419	46	1,576	106
North Carolina	579	69	92,514	19	[7] 6,818	30
Consolidated Edison Co. of New York	577	70	25,153	78	2,393	73
Indiana	558	71	38,002	60	[6] 7,029	28
Wisconsin	557	72	27,154	73	17,145	8
Pacific Gas & Electric Co	535	73	18,299	97	2,316	75
Anaconda Co	523	74	37,773	61	1,057	146
Minnesota	522	75	32,207	67	[7] 2,041	83
Missouri	517	76	30,446	68	[7] 7,054	27
Georgia	507	77	25,332	77	[7] 2,933	61
Union Pacific R.R. Co	505	78	41,780	53	1,530	108
Northwestern Mutual Life Insurance Co	503	79	1,440	168	3,893	41
Virginia	501	80	38,153	59	6,787	31
Alabama	447	81	24,905	81	[7] 2,441	71
Bank of America National Trust & Savings Association	446	82	24,100	85	11,291	13
Iowa	434	83	25,867	76	[7] 4,754	36
Oklahoma	428	84	27,985	72	2,530	69
Columbia Gas System (New York)	427	85	12,530	112	1,150	137
Tennessee	412	86	24,402	84	3,266	49
Connecticut General Life Insurance Co	412	87	2,331	164	1,926	92
Commonwealth Edison	405	88	14,614	106	1,580	105
Oregon	387	89	22,909	89	7,224	25
Maryland	385	90	24,438	83	7,927	23
Baltimore & Ohio R.R. Co	383	91	33,378	65	1,276	130
El Paso Natural Gas	368	92	7,324	134	1,679	102
Chesapeake & Ohio Ry. Co	356	93	26,150	75	1,062	143
Chicago, Ill	355	94	36,608	62	[7] 9,816	14
Connecticut	344	95	24,936	80	[7] 7,211	26
Public Service Electric & Gas Co	344	96	15,331	104	1,455	115
Massachusetts Mutual Life Insurance Co	343	97	2,868	159	2,215	79
Kentucky	342	98	22,860	90	[7] 8,194	21
Los Angeles, Calif	339	99	34,306	64	4,142	40
Mutual Life Insurance Co. of New York	330	100	[7] 3,096	155	2,643	66
General Telephone Corp. (New York) [10]	322	101	50,151	44	1,586	104
Colorado	312	102	18,411	96	[7] 3,151	52
New England Mutual Life Insurance Co	304	103	[9] 2,700	161	2,024	85
West Virginia	297	104	18,706	94	3,693	42
American Gas & Electric Co	297	105	12,566	111	1,391	118
Mississippi	277	106	17,912	99	[7] 1,350	122
Kansas	274	107	23,460	88	[7] 5,044	34
Detroit, Mich	271	108	26,865	74	5,002	35
Lincoln National Life Insurance Co	264	109	[7] 2,226	165	1,358	121
Niagara Mohawk Power Corp	264	110	9,500	122	1,228	132
Philadelphia, Pa	263	111	29,114	71	4,650	37
Southern California Edison Co	255	112	8,310	128	1,373	119
Mutual Benefit Life Insurance Co	252	113	928	171	1,781	96
First National City Bank (New York)	248	114	15,455	103	7,926	24
Philadelphia Electric Co	248	115	8,976	126	1,201	135
Detroit Edison Co	246	116	7,991	131	1,132	139
Chase Manhattan Bank	244	117	14,000	108	8,330	20
Arkansas	235	118	16,228	101	[7] 1,016	152
Consumers Power Co	228	119	10,187	121	1,010	153
New Mexico	223	120	11,264	115	1,030	150
District of Columbia	218	121	23,880	86	2,364	74
Penn Mutual Life Insurance Co	218	122	1,513	167	1,725	98
Arizona	216	123	11,041	118	1,312	128
Connecticut Mutual Life Insurance Co	214	124	[6] 855	172	1,436	116
Boston, Mass	209	125	22,106	91	1,476	112
American & Foreign Power Co., Inc	[11] 207	126	29,400	70	1,224	133
Baltimore, Md	205	127	25,070	79	3,604	44
San Francisco, Calif	192	128	15,496	102	1,365	120
Maine	159	129	11,198	116	[6] 1,991	87
Nebraska	154	130	15,317	105	3,026	57
Utah	154	131	11,093	117	1,313	127
Hawaii	143	132	[7] 11,963	113	[12] 2,053	82
Rhode Island	137	133	8,454	127	2,599	68
Montanta	135	134	9,478	123	2,224	78
North Dakota	126	135	6,866	136	1,315	126
Security First National Bank of Los Angeles	125	136	8,143	129	3,362	48
Cleveland, Ohio	123	137	14,021	107	2,769	63
Chemical Corn Exchange Bank	106	138	5,602	142	3,594	45
Manufacturers Trust Co	105	139	6,628	139	3,654	43

See footnotes at end of table, p. 49.

Billionaire enterprises—Business versus governmental, ranked according to size—Con.

[Data are for 1958]

Business organization or political unit	Revenues [1]		Employees		Assets [2]	
	Amount (millions)	Rank	Number	Rank	Amount (millions)	Rank
Bankers Trust Co., New York	$104	140	5,983	140	$3,128	54
Guaranty Trust Company of New York	100	141	4,121	148	3,175	51
New Hampshire	97	142	8,058	130	[7] 1,047	147
South Dakota	97	143	7,895	132	1,905	93
Milwaukee, Wis	92	144	9,230	125	1,724	99
Cincinati, Ohio	83	145	10,263	119	1,519	109
St. Louis, Mo	80	146	13,768	109	1,474	113
Continental Illinois National Bank & Trust Co	79	147	3,793	150	2,858	62
Buffalo, N.Y	77	148	10,218	120	1,058	145
Northwest Bancorporation	75	149	5,400	143	1,998	86
American Trust (San Francisco)	74	150	3,694	151	1,827	95
Houston, Tex	72	151	7,797	--------	1,975	--------
Mellon National Bank & Trust Co	72	152	2,963	157	2,146	81
Denver, Colo	72	153	6,823	137	1,071	142
First Bank Stock Corp	71	154	5,142	145	1,777	97
First National Bank of Boston	69	155	4,716	146	1,885	94
Crocker-Anglo National Bank	68	156	3,567	152	1,692	101
National Bank of Detroit	63	157	3,979	149	1,947	91
Irving Trust Co	60	158	3,022	156	1,991	88
Dallas, Tex	59	159	6,706	138	1,345	123
Pittsburgh, Pa	57	160	7,201	135	1,146	138
Hanover Bank	56	161	2,831	158	1,958	90
California Bank	45	162	3,209	154	1,205	134
First Western Bank & Trust Co. (San Francisco)	44	163	2,600	162	1,060	144
First Pennsylvania Banking & Trust Co	40	164	2,857	160	1,198	136
Miami, Fla	35	165	4,330	147	1,045	148
Republic National Bank of Dallas	33	166	1,082	170	1,038	149
The Philadelphia National Bank	32	167	2,058	166	1,105	141
New York Trust Co	28	168	1,266	169	1,001	154
First National Bank (Chicago)	24	169	3,218	153	3,026	58
Travelers Insurance Co	23	170	18,522	95	3,073	56
Cleveland Trust Co	18	171	2,548	163	1,471	114
Marine Midland Corp	17	172	5,901	141	2,283	77
Bowery Savings Bank (New York)	[13]	--------	687	173	1,721	100
Philadelphia Saving Fund Society	[13]	--------	635	174	1,116	140

[1] Revenues for all types of organizations and political units are stated on the basis of gross revenues with the exception of corporations which are based on net sales and the Federal Government which are based on net receipts after the deduction of refunds and after transfer of tax receipts to the old-age and survivors insurance trust fund; to the railroad retirement account; to the Federal disability insurance trust fund; and to the highway trust fund.

[2] Assets of States and municipalities represent total assessed valuation; those for the Federal Government represent personalty and realty assets of the executive agencies, offices and establishments of Government, including the Department of Defense.

[3] Represents the total number of civilian employees, including those outside continental United States.

[4] Data are as of Jan. 31, 1959.

[5] Name was changed to Texaco on May 1, 1959.

[6] Data reported are for 1956.

[7] Data reported are for 1957.

[8] Data are as of Feb. 1, 1959.

[9] Data reported are for 1955.

[10] Name was changed to General Telephone & Electronics Corp. on Mar. 5, 1959.

[11] Excludes Argentine subsidiaries.

[12] Represents assessed value of real property only.

[13] Not available in published sources.

Sources: Moody's Industrial Manual, 1959; Banks and Finance Manual, 1959; Municipal and Government Manual, 1959; Public Utility Manual, 1959; Transportation Manual, 1959. New York, Moody's Investors Service.

U.S. Cong., House of Representatives, Committee on Government Operations, "Federal Real and Personal Property Inventory Report (Civilian and Military) of the U.S. Government Covering Its Properties Located in Continental United States, in the Territories and Overseas as of June 30, 1958." 85th Cong., 2d sess., Washington, U.S. Government Printing Office, 1958, p. 11.

U.S. Department of Commerce, Bureau of the Census. "Compendium of City Government Finances in 1958," p. 8; "Compendium of State Government Finances in 1958," p. 9; "City Employment in 1958." Series C-GE58-No. 2, Mar. 23, 1959, p. 7; "State Distribution of Public Employment in 1958." Series G-GE58-No. 1, Mar. 16, 1959, p. 10

U.S. Treasury Department. Annual Report of the Secretary of the Treasury, fiscal year 1958. Washington, U.S. Government Printing Office, 1959, pp. 396-397.

Maureen McBreen, Legislative Reference Service, Economics Division, Jan. 18, 1960.

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