

make new commitments or to add to one's holdings." This recommendation was made in October, 1931, when the Participating Debentures, which are junior to the Secured Debentures, were selling around \$9 (present price 12½ cents).

In January, 1932, the bankers once again recommended them as "an undervalued security" on the ground that "taking into consideration facts alone and not general apprehension unsupported by facts, they represent, in our opinion, an interesting commitment from the standpoint of price in relation to intrinsic value." This recommendation also points out that "at their present market price the equity issues of the Kreuger and Toll Company are selling for about \$64,500,000." It would be of interest to inquire how the authors of this statement determined "the present market price."

Under date of January 28, 1932, they distributed a statement by Ivar Kreuger according to which "the company's holdings of foreign government bonds are now carried on the books at approximately \$50,000,000." The statement also pointed out that "the net assets . . . correspond to about \$16 per Participating Debenture." Were they, one may ask, aware of substitutions on January 28? If so, why should not the holders of the Secured Debentures have been apprised of the changes?

A prominent Stock Exchange house, with offices in cities all over the United States and Canada, including Dallas, Philadelphia, Burlington, Plattsburg, St. Albans, Saranac Lake, Toronto, and Montreal, shortly before Kreuger's death published a special analysis of Kreuger and Toll, in which they recommended the Participating Debentures, which "have an equity of around \$16 for each certificate." The report concluded by advocating them as "an attractive pur-

chase." Another Stock Exchange firm, in a special analysis prepared for the firm's numerous clients, also recommended the purchase of the certificates, that is, the Participating Debentures. "We can," the circular read, "see little or no point in disposing of the Participating Debentures at these levels and, in fact, we consider the American certificates attractive." A reputable statistical organization whose records were "revised September 3, 1931," lists the collateral securing the debentures as it was given in the original prospectus. It would be interesting to find out how the organization goes about revising its records.

The whole picture is shocking. It shatters whatever faith the investor may have retained in those who are supposed to guide the financial destinies of the nation. A thorough investigation is imperatively needed. Such is not likely to result from the committee recently formed under the auspices of the very firms which are responsible for the origination and distribution of the bonds, to "protect" the holders of Kreuger and Toll securities. To begin with, the committee to "protect" the Secured Debenture holders is composed of six men of whom five are connected with the houses referred to above. For the sake of diversification, the head of a New England textile mill is added as a sixth member. One cannot be both plaintiff and defendant.

In order to afford real protection—not to the committee against the investor, but to the investor—an absolutely independent committee may prove essential. This can, however, only be accomplished if the investors desire it. If they do not, it will merely bear out the truth of the Latin saying: "Populus vult decipi; decipiatur" (The people wish to be deceived—let them be deceived).

## The Control of Big Business\*

By WALTON H. HAMILTON

A FEW weeks ago the staid United States Supreme Court took "judicial notice" of the depression. It found "the change in conditions" to be "the outstanding fact, dominating thought and action throughout the country." A little later, in a dissenting opinion, Mr. Justice Brandeis declared that "the people of the United States are confronted with an emergency more serious than war." He did not attempt to catalogue reasons for our current plight or to impute blame; but he did set it down that, "rightly or wrongly, many persons insist that one of the major contributing causes has been unbridled competition." And he did assert that "there must be power in the States and the nation" to correct "the evils of excess productive capacity" and "through experimentation" to "remold our economic practices and institutions to meet changing social needs." In this restrained expression of judicial opinion a sense and reason which are current challenges a sense and reason which are outworn.

Our anti-trust laws express the common sense of another age. Toward the close of the nineteenth century a nation which had been composed of farmers and small business men was confronted by a crisis. A revolution in the ways

of production which had been gaining momentum with the passing decades was no longer to be ignored. The hand trades were giving way to manufacture; the machine process was transforming the ways of production; businesses were becoming great corporations; captains of industry were coming into possession of wealth and power; and the strange and wicked city was dominating the country. A society made up of almost self-sufficient farms, with its complement of local trade, was being transformed into an articulate, even if rather unruly, industrial system. In the whirl of change small traders who saw their enterprises crowded to the wall cried out against the iniquities of big business. The public, which distrusted size as much as it feared extortionate price, realized that untoward things were going forward. An industrialism which had got its start by stealth came on with such a rush as to leave the people bewildered. The world was no longer as it used to be—and ought to be.

In the emergency a policy had to be formulated. In the task it seemed to occur to no one, at least among those in strategic places, to ask whether industrialism was not rather different from anything society had known before, and whether experimentation might not be used to contrive for it a suitable scheme of control. Instead, the thinkers and the statesmen of the times brought to the problem the best wis-

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dom they could muster—and this wisdom was the product of a social experience which was passing. If the farmer found difficulty in making ends meet, or the small merchant was threatened with extinction, or the customer had his pocket picked by the extortionate dealer, or the workingman put in his long hours for a pittance, it was all because the system of free competition was not working.

At the time, the case for an enforced competition seemed to be quite reasonable. Fact may be on time, but thought usually arrives on the scene a little late. The people talked quite grandly about every man being "the architect of his fate"; and they believed quite sincerely in the creed of "each for himself and the devil take the hindmost." In that climate of opinion only individualistic notions of the province of government and the control of industry could gain currency. Moreover, a long experience with petty trade had produced its own economic policy, and the sense of the man in the street was confirmed by the wisdom in the learned books. It was perfectly clear that the competition of seller with seller and of buyer with buyer gave assurance of efficient service, high quality, and fair price. The interests of one party to a trade—seller, lender, or employer—were balanced by the interests of the other party—buyer, borrower, or employee. Nor could any trader help himself at the expense of his customer, for his desire for gain was checked by the rivalry of others for the very dollars he was trying to secure. The ups and downs in prices which came in the wake of competition attracted or repelled capital, and thus in each industry kept the capacity-to-produce adjusted to the demand for the product. In fact, free enterprise was "a great and beneficent system" which kept industries organized, eliminated the inefficient, gave survival to the fit, insured to labor good working conditions and fair wages, and protected the consumer. For all "the blessings of free competition," as the Supreme Court of the nineties called them, a single provision had to be made. Trades were to be kept open, if need be through a legally enforced competition, and an automatic, self-regulating system could be depended upon to secure for the public all the business system had to give. The thing to be done seemed obvious; and an attempt was made to stay the development of large-scale enterprise and to make big business behave as if it were petty trade.

So it was that in the name of *laissez faire* the law was invoked. For some time, even if not from time immemorial, the common law had forbidden "conspiracies in restraint of trade," and a number of States had in the decades following the Civil War aimed statutes at the growing evil of monopoly. In 1890 the Sherman Act, designed to prohibit combinations in "commerce among the several States," was enacted into law. In 1914 the Clayton and the Federal Trade Commission acts were passed in an attempt to extend and to strengthen the federal anti-trust act. The great majority of the States—almost all in the South and West—passed their little Sherman acts.

The resort to law carried its own peculiar hazards. The ideas of common sense had to be translated into the language of legislation; the ends of public policy had to be vindicated through a process of litigation. Economists and statesmen might talk of an enforced competition, but the judiciary gave its attention to "conspiracies in restraint of trade." The language of the statutes caused the courts to consider modern industrial mergers in the light of precedents from a pre-

industrial era. The decisions of a former age were invoked in suits to punish offenders or to "dissolve" monopolies; the litigation had to go forward, from issue to issue and from court to court, under a formal code of procedure never designed to draw a line between desirable and undesirable forms of industrial organizations. The cases were heard before benches of judges far more experienced in the discipline of the law than in business, and far better acquainted with Cooley on Blackstone than with texts on the economics of monopoly. It is hardly strange that questions of anti-social practices were subordinated to the antecedent questions of decorous procedure, and that ingenious attorneys found ways to "wear the case out" before the larger issues were raised.

It is small wonder that the resort to law has not been a conspicuous success. Our era of federal "trust-busting" covers a period of more than forty years. In this period has occurred the greatest movement in the concentration of productive wealth known to history. Yet the statistics of the Department of Justice present a most illuminating picture of law enforcement at work. A little more than two score criminals have been jailed, and eight have fallen afoul of the law for contempt—a matter of a little more than one person a year. A little under 1,400 persons have had to pay fines aggregating about \$1,750,000—or roughly 40 offenders and \$50,000 a year. A number of States have derived far more revenue from trust-busting than has the federal government. Yet the prosecution of cases has not been a profit-making enterprise; the fines collected have fallen far short of the costs of administration. On its face this record is a glorious tribute of respect paid by men of big business to the letter, if not to the spirit, of the anti-trust acts.

This does not mean that the statutes have been without their effect upon the practices of business. They have been ineffectual in preventing corporations from acquiring the physical properties of their competitors and in staying the progress of industrial combination. They have put serious obstacles in the way of agreement among rival manufacturers to restrict output and to maintain price. The barriers have not been insuperable; captains of industry are anxious to live within the law, but they also love to have their own way, and the art of doing both is not unknown to able lawyers. If resourcefulness has often failed the emergency, the credit is not always due to the law. The ups and downs of business strain the morale of all industrial groups; and lapses into the established ways of competition are due more often to a break in discipline from within than to the vigilance of public officials. It is of interest that a number of gigantic corporations have escaped the toils of the law, and that severe penalties have often fallen upon small businesses and upon trade unions. Even where they have not been effective, the acts have been at least a petty nuisance to the interests affected.

But the roots of failure are far more fundamental than a resort to law to give effect to a public policy. The course of industrialism has come with too much of a rush to be stayed; its forces have been too turbulent to be subdued by legislative fiat and court decree; business men have been too powerful to allow their activities to be crowded into the grooves chiseled out long ago for a simpler industry. The universe of petty trade was one sort of place; the world of big business is quite another. In the small town the trader knew his customers personally; he could enlarge his business

as his market expanded; his out-of-pocket expenses furnished adequate bases for his prices. As invention brought changes in technical processes, time allowed an easy accommodation. Under the prevailing system a knowledge of the future intent of customers and of the hidden plans of rivals is essential to a sound policy. The business judgments of today determine the capacity-to-produce of tomorrow; yet, in an impersonal market, the demand may go to a rival or pass on to another ware. In many lines of business overhead costs have become dominant; and as fixed charges are spread over a large or a small output, the market determines the unit cost of production rather than the unit cost the market. In adapting the capacity-to-produce of an industry to the demand for goods, a far neater and less wasteful adjustment is demanded than the separate judgments of business rivals can effect. They must respond just enough and not too much to market trends, and the unity in action essential to order cannot be secured by a policy of competition.

In fact, the competitive system at work presents problems unknown to the competitive system in books. The good people of the nineties were disturbed because rivals might get together and conspire to impose extortionate prices upon their customers; and that danger still exists. But quite as important is the bill of costs which competition imposes upon the producers. It makes for plant waste and surplus capacity; it fails to articulate tidy establishments into orderly industries. A capacity which cries to be used and overhead costs which click on with the clock lead as often as not to an overdone competition which drives prices relentlessly down. In its wake comes a plague of bankruptcies, irregular employment, and wages too low to support a decent standard of life. Under such conditions there is no chance to get answered, or even to have raised, the larger questions of policy which affect all who have a stake in the industry. It makes all who are concerned—executives, salaried officials, investors, laborers, and consumers—creatures of an undirected industrialism.

The cry today is for a revision of the statutes; and yet that revision is no easy matter. An influential group demands that trade agreements be submitted to an official body, such as the Federal Trade Commission, and that advance opinions be given upon the legality of the proposed practices. The proposal has much to recommend it; the bother is that it will probably fail in operation. The spokesman for the government is likely to be guided in his advice by what the courts have said in the past, and to hand down general and platitudinous statements which have little relation to the novel practices for which approval is sought. A business must meet changing conditions; its policies must be adapted to the course of events as they emerge; a declaration that a policy on paper is legal can hardly apply to the policy as it works out in practice. Another group demands the right to "exchange information" and promises to abstain from a regulation of output and a control of price. The bother is that if discipline can be sustained and resourceful lawyers can be retained, the practice prayed for is all that is needed to effect a rather far-reaching monopoly. A third group boldly demands the repeal of the acts and offers no constructive scheme with which to replace them. It insists upon enlarging the control of business over industry when recent events have proved the incapacity of business for the proper exercise of the control it already possesses. The anti-trust statutes are

a declaration that business is affected with a public interest; the moral commitment of that declaration is much too important to be lost.

But no mere expedients can get to the heart of the problem. The demand for change comes from an industrial world; it is not to be met with the devices and procedures of a craft society. The simple idea of the uniformity of all trades, which underlies current legislation, must give way to an accommodation of public control to the varying necessities of different industries. For our businesses are not all alike; banking, railroads, power, and radio-broadcasting have already been accorded their own schemes of control. The methods of production and of marketing in various other trades—building, retailing, milk, coal, textiles, cotton-planting—have their own peculiarities with which the problem of industrial direction must come to grips. In all cases, if there is to be order, if the nuisance of bankruptcy is to be abated, if workingmen are to have regular jobs and adequate wages, there must be some central direction. The formal control, or understanding, must certainly extend to capacity, probably to output, and possibly to price. In all cases, if there is to be flexibility, there must be some local control.

This general end is to be served by no simple and uniform economic organization. We have ceased to think in terms of panaceas; and neither a return to the good old competitive system of our fathers nor the adoption of a ready-made, hand-me-down substitute will meet current need. If our industries are to become instruments of national well-being, we must employ a varied program of economic control. Three distinct types of organization seem to be promising. Industries which produce non-essentials and can win only a limited trade against the allurements of unlike wares demand little public control; their activities may well be intrusted to the capricious solicitude of the market. Industries, such as railroads and power, which are linked with all the activities of the economic order demand a large social oversight; this may be met either by an administration commission or by public ownership. Industries, such as coal and steel, which have distinctive groups of customers may be organized from within under a control in which producers and consumers alike share. Industries must be kept going and their dependents must be given adequate livings; consumers must be accorded protection against an anti-social restriction of output and a monopoly element in price. This problem is not to be solved by any "either this or that" formula; its solution demands clear vision, full knowledge, and neat adjustments.

The plain truth of the matter is that the rewriting of the anti-trust laws is the beginning, not the end, of the problem. We may indulge in tinkering and console ourselves with make-believe and pretense; but the fundamental question stands out in clear-cut relief. Today a lack of harmony exists between the technology of industry and its organization. An economic order in which the productive processes belong to big business and the arrangements for its control to petty trade cannot abide. We cannot banish depression and summon order by invoking the ideas which the people of the 1890's borrowed from a small-town culture. We must devise a scheme adequate to the task of the direction of great industry. In a world of change a society cannot live upon a wisdom borrowed from our fathers.

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