Farmers And Anti-Trust Law

Address By Robert H. Jackson, Assistant Attorney-General Of The United States

The antitrust law is an American invention. Those interests which try to discredit all distasteful legislation by labeling it as "an alien influence" cannot so characterize our laws against monopoly. If any trace of foreign influence can be found it is abhorrence of monopoly and a policy to restrain it.

The antitrust laws, perhaps more than any other public policy, owe their existence to the insistence of the farmers. They first came into State legislation in the agricultural States as a result of farm support. They took their place in the national statute books in 1890 supported largely by the influence of the farm protest movement. They constituted a part of what was known as the "granger laws" and came to enactment as the result of the granger movement or "populist" uprising which caused more jitters among conservatives of that day than the New Deal does today.

The philosophy of the antitrust laws was simple American philosophy. It was their doctrine that competition, left free of restraint, would be a sufficient regulator to assure fair prices and good service to the public. They were based on the theory that the Government owed the duty of policing the economic system to see that no one interfered with its functioning as a system of free enterprise. They were intended to prevent the necessity ever arising for Government control of prices or for Government regulation of business life. They were not designed to get the Government into business, but they were designed to keep the Government out of business.

In the 47 years that have passed since enactment of the Sherman antitrust law we have accumulated a great deal of experience with these laws. It was 5 years before the first test case reached the Supreme Court, and the industry involved was the sugar industry. The combination in question had acquired control of 98 percent of the sugar refining business of the United States, but the Supreme Court held that this had no influence upon interstate commerce. Ths sugar decision sweetened the path of the monopolists. During the very formative period of great industrial combinations it rendered the law a dead letter. So conservative a person as President Taft has said of the sugar decision: "The effect of the decision in the Knight case upon the popular mind, and indeed upon Congress as well, was to discourage hope that the statute could be used to accomplish its manifest purpose and curb the great industrial trusts. * * * So strong was the impression made by the Knight case that both Mr. Olney and Mr. Cleveland concluded that the evil must be controlled through State legislation and not through a national statute, and they said so in their communications to Congress."

It was not until the administration of Theodore Roosevelt that a vigorous effort to enforce the antitrust laws was made. Court decisions rendered them rather ineffectual. The International Harvester Co. and the United States Steel Co. were exonerated, though they controlled very large parts of their respective industries, but the Court laid down the doctrine that great size and great concentration of economic power were no offense under the law. That would have been strange doctrine to the grangers of 1890.

Under the administration of President Wilson, recognizing that the enforcement through the courts had not been satisfactory, Congress created the Federal Trade Commission and passed the Clayton Act. By a series of interpretations, which it is not necessary here to detail, these laws were deprived of much of their effectiveness.

The farmers seemed to have felt that once a law was passed a reform was accomplished. The failure to keep sympathetic administration in charge of the law and most of all failure to demand a judciary sympathetic with the needs of the people instead of responsive to the desires of the trusts have rendered the results of the laws disappointing.

This failure to enforce the antitrust laws, and the restrictive interpretations placed upon them by the courts, permitted the development of the conditions which led to the experiment in industrial control known to history as the N. R. A. Had the Sherman antitrust law been effective to preserve competition and the Federal Trade Commission Act effective to prevent unfair competition much of the N. R. A. experiment would not have been necessary.

Meanwhile our economy has been the subject of various dislocations by virtue of the competitive struggle for advantage and privilege at the hands of government. The great industries have insisted upon having tariff advantages of immeasurable value. These tariff advantages permitted them to charge high prices. The farmer has justly insisted upon some kind of benefit which would offset the benefit that he was obliged to pay to the great industrial interests. These benefits in turn to be raised by taxes, and this has created no small part of the modern question of taxation about which industry now complains.

Why did the farmers and the farm leaders invent the antitrust idea? Like most other influences, it was born of sheer necessity. In the days of the granger uprising the farmer had begun to see himself surrounded by big business. As invention had tended to make farming a machine process, he found himself compelled to buy more utensils, and vastly more expensive utensils, from the great industrial combinations. On the other hand, he saw great combinations coming between himself and his consumers. He had once dealt pretty directly with the consumers of his products, or at least he was enabled to exercise his well-known talent for bargaining with competing groups of buyers. At about this period of our history he found, however, that between himself and his consumers big business combinations were intervening. Packers, millers, and processors were becoming his only market.

The farmer had not yet learned to buy cooperatively or to sell cooperatively. The individual farmer felt a terrific disadvantage in bargaining with powerful combinations. He could not choose the time to sell his produce. He had to dispose of it in order to pay his taxes, or buy his winter clothing, or meet his machinery notes. He could not bargain as to price but received a proposition which he could take or leave. He became fearful of his ability to survive, hemmed in on both sides by industrial combinations whose power and resources overwhelmed him. The antitrust laws promised him relief. After 47 years what relief has he had?

The simple fact is that the farmer, except to the extent that he buys or sell cooperatively, is in exactly the position today that the grangers of 1890 feared he would be.

Let us consider the farmer as an individual seller. When the farmer attempts to sell his produce he has no bargaining power that compares with that possessed by his only buyers. He finds a concentrated control and ownership of the only channels by which his produce may reach its ultimate market. Thirteen manufacturers bought 64 percent of the 1934 tobacco crop; three manufacturers alone bought 46 percent of the 1934 crop. I take it, no one will doubt that when three buyers take 46 percent of a crop those three are in a position to fix the price. They would be strange persons if they did not take advantage of the power they have. Thirteen companies bought 65 percent of the commercial wheat crop in the fiscal year 1934 and 1935, and here again three of those companies bought 38 percent of the commercial crop. Ten packers in 1934 bought 51 percent of the cattle and calves and 37 percent of the hogs. Twelve milk companies bought 13 percent of the commercial fluid milk production of 1934. Thus big business has thrust itself between the producer and the consumer and is in a position to dictate terms to each.

Let us consider the farmer as a buyer of materials, supplies, machinery, and equipment for production purposes. These purchases are business transactions. The machinery cost and the cost of fertilizer are important factors in the cost of production. I recall my grandmother's lamenting one day that farm machinery had ever been invented. It may not have been a progressive sentiment or sound economics. She said to me that when they had to cut grass with a scythe, raked hay by hand, and cradled the grain and threshed with a flail, they had been able to prosper better than after it became necessary to have farm machinery; that from the time they bought a horse mower she could not remember of ever being out of debt either for additional machinery or replacements. Maturities of machinery notes and interests were added to taxes, crop failures, and pests as farm worries.

Based on prices and received by farmers and using the 1925 to 1929 average as 100 percent, the prices received for all farm products fell in March of 1933 to 37 percent of normal. Farm machinery at its lowest, fell to 88 percent, fertilizer to 72 percent, building materials for the farm to 74 percent, and equipment and supplies to 69 percent. The fall in farm produce was double the fall in fertilizer, farm machinery, and farm supplies. Further, by September of 1937 the index of prices received for all farm products had reached a recovery figure of 80 percent. But farm machinery had kited to 102 percent, building materials for the farm to 98 percent, and equipment and supplies to 82 percent. Those industries that recovered at the expense of the farmer recovered much faster than farm prices. Looking over the industries that enjoyed this advantage we find them to comprise industries whose ownership and control are highly concentrated.

Many people do not realize the extent to which the farmer is a buyer for the family home like any other consumer located in the town or city. Severely restricted farm incomes available for needed family living expenses make the cost of living a difficult problem for the farm family as well as for the wage earner in the city. Gross farm income dropped from $11,941,000,000 in 1929 to a low $5,357,000,000 in 1932, and it recovered in 1936 to $9,530,000,000. The farmer's fixed charges such as his interest payments, his taxes, and other unavoidable items of expense, did not decrease. This sharp reduction in farm income had to come out of the farm standard of living. It reduced the funds available for food and nourishment for farm families. It made medical and dental care and attention almost impossible. It made educational and cultural opportunities rare.

It has been estimated that of his total cash income the farmer was obliged to expend 27 to 40 percent for food purchased in 1935 and 1936. Thus the great industries buy from the farmer and then sell back to him again, and he is at both ends of the transaction.

The disadvantage of being both a seller of raw materials and a buyer of the same processed materials is proven by studies of costs.

In the 1925-29 period a typical working family of five was found to pay for farm products $411, of which $196 went to the farmer and $215 for transportation, processing, and distribution.

By 1933 the consumer paid only $45 less for the same supplies, but the reduction to the farmer was $204. The loss to the farmer was double the saving to the consumer. Where the farmer was also a consumer he was held to high prices and allowed only low ones. His game was "heads I lose, tails, I do not win."

Not only had the antitrust laws proven inadequate to protect the farmer but the Government found it necessary to intervene actively to save him from complete disaster by restoring the former parity of farm products with farm purchases.

Industry has complained that the farm program provides for the upward adjustment of farm prices with Government help. It is to be borne in mind that the farm program is a public program. It is to be drafted in the terms of public policy. It will necessarily be administered with due recognition of the reciprocal obligations which run from agriculture to the rest of the Nation, and from the Nation to agriculture. It is under public control, can be modified from time to time in the public interest, and its operations are known.

The controls which govern the industrial prices, output, and practices of many of the large industries with which the farmer deals are not public controls but private controls privately exercised. From these private controls of prices grave public consequences follow.

For the past 5 years we have been slowly but steadily on the way to recovery. That recovery required a gradual and fairly well balanced restoration of price levels and of prosperity.

In the early part of 1937 it became apparent that certain of the great industries of the country had not been satisfied to accept a gradual, but sound recovery, but had started a venture in profiteering which was certain to show our price structure was out of balance. The President early called attention to this. When farm prices had recovered to 80 percent of the 1925 to 1929 average, farm machinery had reached 102 percent and building materials for the farm 98 percent. It was obvious that somebody was unbalancing national recovery.

Unfortunately farmers have often been told that their interests in this national recovery program are opposed to the struggle of the laboring classes in the cities for a better share in the profits of industrial production. The farmers are told that their interest is against labor and that it is labor demands that has unbalanced national recovery. What are the facts?

Let us suppose we have an industry with 10 owners and executives. It has a million-dollar margin between operating cost and selling price of its product. Is the farmer more interested in the owners' share or the workers' share? The owners already have incomes above a satisfactory living scale or they could not have accumulated an owner interest. What they get of the profit will add little or nothing to the market for farm products. The owners' share may be reinvested, or go into luxury products or foreign travel.

What becomes of the workers' share? Careful studies of actual expenditures by families of employed workers have been made by Dr. Lubin of the Bureau of Labor Statistics. The story of what happens to family expenditures as family incomes rise, shows the deep interest which the farmer ought to have in the welfare of the consumers with low incomes. The studies first find the average earnings available for each adult member of the worker family.

When this amount, per adult, is increased from $300 or under to $499, there is a rise of approximately 60 percent in expenditures for leafy vegetables, 102 percent for fresh fruits, and they use for each adult 50 percent more meat, poultry, eggs, and cheese. Despite the importance of milk to the health of our youngsters, 4 out of every 10 families consumed less than 2 quarts of milk per person per week. The struggle of labor for an adequate minimum wage is a struggle for enough purchasing power to buy your products. Nothing is more important to the farmer than that.

Let us look at another aspect of the same problem. The Government as you know is making great efforts to provide workers with low-cost housing. What does that mean to the farmer? Study was made of the typical family with an income under $1,000. That class includes over six million families or 21 percent of all families in the United States. The results showed that if these families could reduce housing expenditure by $15 per year, they might be expected to spend $4.50 more for food, $2.50 more for clothing, and the balance for the other essentials of life. In other words, as they were relieved of the pressure of rents they raised their expenditures for food and clothing, both of which add to the market for farm products. Is it not apparent that the farmer has a definite stake in the low-cost housing program of the Federal Government?

A similar advantage to the farmer would accrue from antitrust laws which would protect the consumers of the Nation from price exploitation. Every excessive charge made against a family reduces its market basket.

The President has indicated that he will propose a revision of the antitrust laws. Powerful interests will try to reduce the revision to an idle gesture, they will try to prevent any real price protection to the public, and they will fight with might and main any effective laws stopping the growing concentration of wealth and industrial control.

It would not be possible nor proper for me to try to anticipate the President's recommendations. But it is timely to impress you now with certain facts about antitrust policy.

Efforts to enforce, or efforts to improve, the antitrust laws do not indicate a hostility of government to business against some other kind of business. It may be small business struggling to maintain itself against big business. It may be fair competition fighting to save itself from unfair competition, but always there are business interests on both sides of the controversy.

Furthermore, the antitrust laws are just as much in need of vigorous enforcement in a period of recession as in a period of rising prices. One of the worst evils of a depression is that prices do not fall in equal proportion. If they did so, the fluctuation of prices would cause much less injustice. But we find that when the day of recession comes we have two distinct kinds of prices. One is the rigid price that holds inflexible or with only a slght variation throughout a depression. It is associated with the industry subject to highly concentrated control. Those industries reduce the volume of output and maintain their prices. A reduction in the volume of output throws men out of work. The rigid prices industries must bear a heavy load of responsibility for depression periods. The other kind of price is the flexible price for farm commodities, textiles, and some other prices that are not subject to control and that move upward or downward with the ebb and flow of the economic tides. When a man has to buy in the rigid price market and sell in a flexible market, as the farmer does, he then knows what monopoly at its worst can do to him.

I regard the revision and reenforcement of the antimonopoly laws as a part—and a necessary part—of the national recovery program. I do not believe that we can have a stable economic structure that is half monopoly and half free competition. Either we must get rid of monopoly pegged prices or we must find controls which will peg other prices in relation to them. I, for one, do not want to see the Government go into the price-fixing business. Neither do I want to see the farmer and those who cannot fix their prices starved out of business by those who are better organized.

Pending the enactment of new and better antitrust laws, we will enforce those we have as well as the courts will let us. We will check manipulation of prices, keep competition free of restraints, stop the coercion of small business by big business and restrain unfair competition. Both the Federal Trade Commission and the Department of Justice are pursuing a vigorous policy of enforcement.

The future of our antitrust laws will have great influence on the kind of life we are to lead on this continent. If they fail, then the free opportunity of humble men to engage in small but independent enterprise must pass away. We are engaged in a struggle to keep from being a nation controlled by a couple of dozen corporations. That isn't Americanism as we have struggled to create it. That isn't Americanism as we stand ready to fight for it.