THE SOCIAL CONTROL OF PRIVATE ECONOMIC POWER

by

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The Case for Social Control

The predominant and distinguishing characteristic of our economic system is that it is run largely by private businesses. These enterprises range in size from small shopkeepers, farmers and providers of numerous services to enormous corporations whose individual revenues eclipse those of most nations. It is the role played in our economy by these large corporations that I shall address tonight.

Large corporations have been given the responsibility of running key sectors of our economy. For the most part, they process and distribute our food, make our transportation equipment, control our financial system, manufacture the armaments needed for national defense, hold commanding positions in most other important industries, and are leading economic participants in many nations throughout the world. Business historian Harold Livesay explains that private corporations have been "appointed the chief caretakers of the American dream of universal prosperity and happiness."[1/] Harold Geneen, former chairman of ITT, takes for granted that "the larger corporations have become the primary custodians of making our entire system work."[2/]

Few would quarrel with the view that large corporations are the custodians of our economic machine. They have much to say about the nature and timing of capital investments, the character and quality of the products we consume, the volume and direction of research and development effort, and other matters that affect the quality of our lives.

A few statistics illustrate the extent and growing centralization of corporate decision making. In 1979, the two largest industrial corporations, Exxon and General Motors, had combined sales of $150 billion; after adjusting for inflation this was greater than the combined sales of the 200,000 manufacturing businesses operating around 1900. Not only have corporations become larger, but they control an increasing share of industrial activity. In 1947, the 200 largest industrial corporations controlled about 45 percent of all industrial assets; today their share is about 66 percent. The share held by the top 200 today exceeds the share held by the top 1,000 in 1950. Within large industrial subsectors, concentration is growing even more rapidly. For example, between 1950 and 1978 the top 50 food firms' share of all food manufacturers' assets rose from 36 percent to 64 percent.[3/] At this rate, these large conglomerates will control virtually all food manufacturing assets in another two decades.

The growing importance of the largest corporations is all the more impressive because it is occurring within an ever expanding universe, wherein many established industries continue to grow and many entirely new industries are born each decade.

These statistics suggest the central role a relatively few corporations play in running our economy. But their importance does not derive solely from their huge and growing share of overall economic activity. Another feature of these enterprises is their tendency to operate in many separate markets, many of which are highly concentrated and dominated by these largest corporations. This is the source of much of the economic power of the large American corporation, the power of a deep pocket filled with monopoly profits.

This private power can be used for good or ill, and how it is used affects all of us. It is hardly surprising, therefore, that in a democratic society a system of social controls has evolved to place restraints on private economic power.

Concern with these matters has given birth to various types of social control of corporate enterprise. The Sherman Antitrust Act of 1890 was this nation's first effort (at the national level) to adopt a means of social control designed to use competitive market forces as the means of disciplining private enterprises. Writing in 1911, Supreme Court Justice John M. Harlan, characterized the mood that gave birth to the Sherman Act:

> All who recall the condition of the country in 1890 will remember that there was everywhere, among the people generally, a deep feeling of unrest. The nation had been rid of human slavery--fortunately, as all now feel--but the conviction was universal that the country was in real danger from another kind of slavery sought to be fastened on the American people; namely, the slavery that would result from aggregations of capital in the hands of a few individuals and corporations controlling, for their own profit and advantage exclusively, the entire business of the country, including the production and sale of the necessities of life.[4/]

Today, many persons believe the antitrust approach begun in 1890 has been made obsolete by changes in industrial organization and improved economic wisdom about our system. Alan Greenspan, Chairman of the Council of Economic Advisors under President Nixon, put it this way:

> The Sherman Act may be understandable when viewed as a projection of 19th Century fear and economic ignorance. But it is utter nonsense in the context of today's economic knowledge.[5/]

Much of the new economic wisdom originates in the teachings and preachings of "Chicago School" economists. These laissez-faire scholars argue that competition is more intense today than in 1890, which may explain why Freidman, _et al_., frequently espouse social policies reminiscent of 19th century economic Darwinism.

But the world of Adam Smith has not been reborn. The great weight of the empirical evidence supports the view that today market power is the rule not the exception in most important industries. Therefore, while antitrust may be an ineffective and otherwise imperfect public policy, it cannot be dismissed on grounds that there no longer exists excessive concentrations of economic power that impose a heavy burden on our economy.

The Costs of Market Power

Various estimates have been made of the costs imposed on consumers by the holders of market power. Numerous econometric studies have demonstrated a positive relationship between market concentration and the level of profits. But monopoly profits generally understate the full costs of monopoly power. Sometimes firms have higher costs because the absence of competition permits them to lead the quiet life, whose handmaiden is inflated costs.[6/] Other firms pursue strategies where higher prices can only be achieved through higher costs. For these reasons the costs of market power are only partially reflected by inflated profits. Therefore, studies that examine the relationships between market power and price levels are preferable to those examining the relationships between market power and profits.

Such price studies have now been made in several industries.[7/] My initial findings in a study examining prices of grocery product manufacturers show that in many products the leading brand commands a large price premium over lesser brands and private labels. These differences in prices appear to be far greater than the differences in profits earned on these brands, suggesting that those able to command the high prices have higher costs as well due to extensive advertising, product proliferation or other factors inflating manufacturing and distribution costs.

Parker and Connor's study of food manufacturing found that consumers pay an enormous tribute to the holders of market power. Using alternative estimating procedures, Parker and Connor estimate monopoly overcharges of 7.3 percent of sales, or 12.5 billion in 1975.[8/] Some economists express disbelief in these findings, simply asserting that this estimate is absurdly high. My own preliminary analysis confirms that these estimates are realistic.

By manipulating consumer demand through advertising, many grocery product firms have succeeded in escalating prices over time. The dynamics of this process is illustrated by recent events in the beer industry, which historically was quite decentralized and offered consumers a considerable range of choice.

Following Philip Morris' acquisition of Miller Brewing Company in 1970, it accelerated Miller's advertising and promotion outlays. In 1972, Philip Morris-Miller bought the Lite beer brand. Its subsequent promotion of this brand is a classic example of advertising-created product differentiation, allowing a product that costs less to make to be sold at a premium price. Philip Morris-Miller followed up its Lite compaign with an enormous advertising blitz of its recently acquired Lowenbrau brand, attempting to position it as a major factor in the superpremium market segment.

Other brewers responded to these moves by accelerating promotion of their own premium and superpremium brands of beer. The result has been skyrocketing promotional outlays, especially for television advertising where the top five brewers' expenditures rose from $45 million in 1972 to $232 million in 1979, an increase of 415%.

The Lite story is only a play within a larger play, the consistent theme of which is to persuade consumers to switch to premium and superpremium beer brands. I estimate that the leading brewers' success in increasing the share of premium and superpremium beers from about 30 percent of beer sales in 1970 to 70 percent in 1980 will cost beer drinkers about $500 million in 1980. Nor have consumer benefits been commensurate with the higher prices paid. There is no evidence that consumers can detect in blind tests real taste differences among beers. As Scherer says, "American consumers pay their premium price mainly for the label rather than for the quality of the contents."[9/]

Monopoly overcharges in food are only part of the total monopoly overcharge bill in our economy. Scherer estimated that in the late 1960s the total costs of market power were about 9.2 percent of GNP.[10/] Applied to 1979 GNP, this would amount to a staggering $210 billion.

Clearly, the market power problem has not withered in the nine decades since the Sherman Act was enacted. On the contrary the problem has grown in my judgment, and will continue to grow unless steps are taken to cope with it.

The preceding estimates of the magnitude of the problem may well understate its full costs. An increasing number of economists and public policy officials have come to believe that the ubiquitousness of market power creates serious problems in running the American economy--as well as all other capitalistic market economies--at full employment without excessive inflation.

Time permits only a brief summary of the argument in detail.[11/] The crux of the matter is that market power creates an inflationary bias in our economy. Orthodox economic theory asserts that the price level rises and falls only as we change aggregrate demand. The only cause of inflation, so this theory predicts, is when too few goods are being chased by too much money; this is called demand-pull inflation. If this were the only cause of inflation, it could be controlled quite simply by contracting aggregate demand. An heroic assumption of this theory, however, is that prices and wages are determined by free market forces. If this were so, there would not be such a thing as a wage-price spiral; nor would prices and wages fail to fall when aggregate demand declined.

Unfortunately, the real world does not conform to this simple theory; instead prices and wages often rise in the face of falling demand. The behavior of the steel industry during the 1950s is a classic example of so-called "administered" or market power caused inflation. Prices were raised repeatedly in the face of falling demand. The inflationary pressures caused by this perverse behavior were carefully studied by economists during the 1950s[12/]

The events of the 1950s set the stage for the policies adopted in the 1960s. The Kennedy-Johnson "guideposts for noninflationary wage and price behavior" called for the kind of wage and price behavior generated by competitive markets. Most importantly, they were an explicit recognition that it was impossible to achieve full employment without inflation by relying solely on "free market" forces.

I shall not here review the experience with these guideposts, except to give my conclusion that they were quite successful in permitting noninflationary expansion until about 1966, when overstimulation of the economy caused demand-pull inflation. However, the guideposts were moderately successful in containing inflation despite the inflationary pressures of the Viet Nam War. In January 1969, consumer prices rose at an annual rate of only 4.8 percent despite an unemployment rate of only 3.3 percent; moreover, the budget was running a healthy surplus.

Subsequent events should be recalled for those with short or faulty memories. Doing so may be a case where, in the words of Oliver Wendell Holmes, a page of history is worth a volume of logic.

Under President Nixon, the "free market" was given an historic modern-day opportunity to prove its ability to deal with the inflation-unemployment problem. Shortly after his inauguration, President Nixon made a solemn pledge: He would bring about price stability without increasing significantly unemployment, and he would accomplish this victory without any government intervention in the marketplace. As America's number one football fan, he laid out his "game plan" for achieving this victory. The plan was simple: Retard the growth in aggregate demand by balancing the budget and curtail the money supply, and free market forces would do the rest. As the growth in aggregate demand slowed, prices would stop rising and the inflation would be brought under control. All this would be accomplished after a few "awkward months" during which high interest rates would cause some adjustment pains, slackening demand would cause a mild slowdown in production and business profits, and unemployment would rise modestly--perhaps to just over 4 percent.

The adjustment process predicted by Nixon's "game plan" rested on the assumption that business would respond to slackening demand by not raising prices or, better still, by reducing prices, and labor would settle for small wage increases as inflation slowed and the demand for labor slackened "modestly." President Nixon translated into policy his faith in free market forces by stating publicly just six days after his inauguration, and periodically thereafter, that he did not intend to interfere with particular price and wage decisions, as had been done during the 1960s. And, indeed, for 31 months the Office of the President did not interfere with price or wage decisions, except for a few instances in the construction industry.

Seldom in our history has a president put an economic theory to such a persistent test, and seldom have the economic costs of error been higher. During 1969 and 1970, fiscal and monetary policies generally followed the Nixon game plan. But prices failed to follow the role assigned them in the plan: instead of moderating, they rose.

Because prices increased in the face of declining demand, the available supply of goods could not be sold at the higher prices. As a result, the utilization of manufacturing productive capacity fell from 85 percent in the first quarter of 1969 to 73 percent in the third quarter of 1971. At the same time, unemployment rose from 3.3 percent to 6.1 percent. This excess capacity, in turn, cut sharply into corporate profits. Declining profits, plus a general loss of investor confidence in the President's game plan, triggered the sharpest stock market decline since the Great Depression. The game plan did not lead to the end run around rising prices and high unemployment predicted by the President's economic advisors.

On August 15, 1971, the President acknowledged that the plan had failed and he unveiled an entirely new "economic plan"--a system of wage-price controls. Where did the original plan go wrong? Why didn't prices respond to the declining demand as predicted? The fatal flaw in the plan was the fundamental assumption that "free" market forces were sufficiently powerful to discipline key price and wage decision-makers in the economy. Clearly they were not.

Many events have occurred since Nixon's great experiment with "free markets." The dramatic rise in oil prices and other external shocks have created new inflationary forces. But one thing seems clear: Our economic system is not sufficiently flexible to absorb such shocks without experiencing high unemployment or excessive inflation--or both.

It is aximatic that those who ignore history are destined to repeat the mistakes of the past. Like President Ford, today President Carter is repeating the mistakes of the past. We are once again relying solely on restrictive monetary and fiscal policy to quell inflation. This policy deliberately and purposefully weakens our economy to purge it of inflation forces. Unhappily, this is our only option so long as we rely on market forces alone.

This inevitably raises the question of whether to abandon, partially at least, our sole reliance on market forces by adopting some system of wage and price controls. Most economists assert with great conviction that wage and price controls are an unacceptable alternative. Why? Everyone knows, say these holders of the conventional wisdom, that price controls have never worked. This is nonsense. Merely because a majority of economists agree about a matter does not make it so. For as Alfred Marshall said, "nothing should be so much distrusted as the majority view in economics."

The truth is that controls have worked, and even though Nixon's program was administered by persons unsympathetic to controls,[13/] Phases I and II of that program did work surprisingly well. It is well to recall that the Dow-Jones industrial average of stock prices reached its historic high in January 1973. But when President Nixon announced the termination of Phase II of his control program, which signaled the end of effective controls, sophisticated investors knew that the decision to rely solely on monetary and fiscal policy would result in a deep recession. Experience proved them correct. The Dow-Jones average fell from its lofty height of 1,052 in January 1973 to 558 in January 1975. Thus, while most investors and businessmen abhor controls in the abstract, they generally fair better under controls than during recessions.

Economists are quick to condemn controls mainly because they fear controls will create serious distortions in the allocation of resources. Yet these are trivial compared to the inevitable "distortions" that accompany contractionary monetary and fiscal policy: high interest rates, high unemployment, under-utilization of productive capacity and depressed profits. To expect otherwise requires a triumph of hope over experience. According to Okun's Law, as the economy departs from full employment, each 1 percent increase in unemployment results in a 3 percent decrease in GNP. In today's terms, that means a 3 percent increase in unemployment will cause GNP to decline by over $200 billion. This waste of human and economic resources vastly exceeds the economic distortions so many economists fear as by-products of controls.

These policies also increase greatly our national debt. For example, the greatest federal deficits in peacetime occurred during 1975-1976, a staggering $124 billion. This exceeded by $27 billion the entire increase in the national debt between 1945 and 1973. Likewise, the recent talk about balancing the budget is pure nonsense. I predict the recession induced by this administration will frustrate efforts to balance the budget.

So where does this leave us? It finally comes down to this: either we have price and wage controls or high unemployment and/or excessive inflation. Although I do not always agree with Professor John K. Galbraith, who addressed this forum last fall, I am disposed to his strategy of confining such controls to the price decisions of the several hundred largest corporations and the wages of the largest labor unions. I do not believe it is necessary to control smaller businesses, except perhaps in health care, and certainly not competitive industries like farming.

The breadth of controls will depend upon the extent to which we keep competition alive. So in a sense we face this choice: more controls or more compeitition. The greater the area of competition, the smaller the area requiring controls.

Procompetition Policies

This brings us to the question, what public policies should be taken to prevent further centralization of economic power and to increase competition where needed? I will discuss only two policies: (1) more effective merger enforcement and (2) industrial restructuring of highly concentrated industries.

Conglomerate Mergers

Merger policy is the essential first step in preventing further increases in concentration in particular markets and in overall centralization of power in the economy. Merger policy has been very effective in preventing mergers between direct competitors, i.e., so-called horizontal mergers. Since 1950, there has been an enormous merger enforcement effort; the FTC and Justice Department issued about 450 merger complaints challenging over 1,500 mergers, most of which were horizontal mergers. I am confident that these actions prevented many industries from becoming highly concentrated, and permitted the erosion of concentration in others.[14/]

However, this enforcement effort has left virtually untouched the numerous conglomerate mergers occurring since 1950. Given the enormous growth of the economy in the post-war period, the share of the economy controlled by the few hundred largest corporations likely would not have increased, and probably would have declined in the absence of such mergers. Though there is much we do not know about the causes and effects of conglomerate mergers, we know much more today than during the great merger wave that peaked in 19681969. At that time, many journalists, businessmen and economists said the accelerating conglomerate merger activity reflected a new era, a superior economic order led by men of vision and superior managerial skills.

Many economists, who never learned about conglomerate power because their graduate training focused solely on market power within particular industries, were inclined to dismiss that which they did not understand. Interestingly, Joan Robinson, who did much to refine the theory of imperfect competition, says in the introduction to the latest edition of her classic work that it contributes little to understanding the modern conglomerate: "My old-fashioned comparison between monopoly and competition may still have some application to old-fashioned rings, but it cannot comprehend the great octupuses of modern industry."[15/]

A growing body of empirical work demonstrates that many of the sanguine interpreters of the great merger wave of the 1960s were merely rationalizing events rather than explaining their causes. Professor Dennis C. Mueller[16/] of Cornell University recently made a most comprehensive and insightful review of the voluminous research in this area. He concludes that considerations other than efficiency motivated most large conglomerate mergers. But a question still remains: Even if conglomerate mergers generally do not improve efficiency, are there any reasons for placing restraints on such mergers? Economics can only provide a partial answer. Noneconomic considerations probably are more important here just as they always have been in formulating our antitrust laws. Ultimately, the people must decide what kind of economic system they want. This involves social and political considerations as well as purely economic ones.

Economists differ in answering this question, and time allows only brief examination of it. But if one starts with the proposition that it is our national policy to promote a system of competitive, decentralized capitalism, two propositons follow. First, there is no persuasive evidence that large conglomerate acquisitions promote this objective. Second, there is evidence that large conglomerate mergers can have various adverse effects.[17/] The ultimate cumulative effect of numerous large mergers may be to create an economy dominated by conglomerate enterprises unresponsive to competitive forces.

Fortune magazine summed up one such danger, that resulting from extensive reciprocal trading among large conglomerates:

> ...trade relations between the giant conglo--merates tend to close a business circle, left out are the firms with narrow product lines; as patterns of trade and trading partners emerge between particular groups of companies entry by newcomers becomes more difficult.[18/]

Indeed, Fortune concluded that "the United States economy might end up completely dominated by conglomerates happily trading with each other in a new kind of cartel system."

But reciprocal trading is only a symptom of the larger problem of conglomerate interdependence and competitive forbearance in an economy in which most commerce is controlled by a few huge corporations.

The Wall Street Journal editorialized at the peak of the great conglomerate merger wave of the late 1960s that:

> ...unchecked expansion of conglomerates would eventually reduce competition and impair the efficiency of our approximation of a free market economy. When ties among large corporations get too widespread and too involved, it seems to us they will impede the free movement of prices and

> capital even if the merged corporations are not in the same field. Certainly, the consolidation of various corporations into conglomerates could invite a vastly increased concentration of economic power, which gives us pause on both economic and social grounds.[19/]

Conglomerate mergers also impact adversely on our social institutions. Various studies including some done by members of the Business School of the University of Wisconsin have found that mergers, especially conglomerate ones, often impact adversely on communities in a variety of ways. These include a reduction in the use of legal, financial, accounting and advertising services in the acquired firm's community, and a decline in participation in community affairs by top management.[20/]

Similarly, ever increasing centralization of economic power is inconsistent with our political institutions. William O. Douglas articulated the view that such power is contrary to proper functioning of democratic institutions. As he put it:

> Industrial power should be decentralized so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men. The fact that they are not vicious men but respectable men is irrelevant.

Nor can these concerns be dismissed by asserting that they are bogeymen created by critics of capitalism, as implied in a recent lead article in Fortune attacking Senator Kennedy's conglomerate merger bill.[21/] Significantly, in the same issue an article examining "The New Divisions of U.S. Politics" revealed that 51% of Americans with incomes of $25,000 or more believed that "big business is becoming a threat to the American way of life."[22/] The fact that a majority of the most fortunate beneficiaries of American capitalism hold this view should give those pause who prefer to believe that there exists no real concern among people on the issue of conglomerate-created centralization of economic power.

Many thoughtful businessmen are becoming concerned with the swelling wave of conglomerate mergers. A longtime student of our system, A. C. Hoffman, retired Vice President of Kraft, Inc., observed: "At the present rate at which American industry is being merged and consolidated, we will indeed reach that ultimate stage of monopoly capitalism which Marx predicted--and ahead of even his schedule."[23/]

There was a time when it appeared that existing law was adequate to deal with conglomerate mergers. In 1969, Richard McLaren, the newly appointed head of the Antitrust Division, announced that he would challenge all large conglomerate mergers unless he received an adverse decision from the Supreme Court.[24/]

McLaren did more than talk. He challenged a series of large conglomerate mergers during 1969-1970. The most famous of these were three separate acquisitions by ITT, itself a large conglomerate. After prosecuting these cases aggressively for two years and after one had reached the Supreme Court, the Justice Department in a surprise move settled all three cases. The main effect of this action was to prevent the Supreme Court, headed by Chief Justice Warren, from rendering a decision in any of these crucial cases.

Subsequent events proved that McLaren's efforts foundered, as Henry C. Simons might have said, on "the orderly process of democratic corruption."

ITT's extensive lobbying efforts at all levels of government are well documented.[25/] But we are indebted to the release of the famous White House tapes for an insight as to President Nixon's views of and involvement in the ITT cases. The President objected strenuously to Assistant Attorney General Richard McLaren's actions against ITT. The following are excerpts from a telephone conversation between the President and Deputy Attorney General Richard Kleindienst, April 19, 1971, from 3:04 to 3:09 p.m. The telephone conversation occurred on the eve of the Department of Justice's filing of its Brief before the Supreme Court appealing a district court's decision in the U.S. v. ITT-Grinnell, merger case.

KLEINDIENST: Hi, Mr. President.

PRESIDENT: Hi, Dick, how are you?

KLEINDIENST: Good, how are you, sir?

PRESIDENT: Fine, fine. I'm going to talk to John [Mitchell] tomorrow about my general attitude on antitrust,

KLEINDIENST: Yes sir.

PRESIDENT: and in the meantime, I know that he has left with you, uh, the IT&T thing because apparently he says he had something to do with them once.[26/]

KLEINDIENST: (Laughs) Yeah. Yeah.

PRESIDENT: Well, I have, I have nothing to do with them, and I want something clearly understood, and, if it is not understood, McLaren's ass is to be out within one hour. The IT&T thing--stay the hell out of it. Is that clear? That's an order.

KLEINDIENST: Well, you mean the order is to--

PRESIDENT: The order is to leave the God damned thing alone. Now, I've said this, Dick, a number of times, and you fellows apparently don't get the me--, the message over there. I do not want McLaren to run around prosecuting people, raising hell about conglomerates, stirring things up at this point. Now you keep him the hell out of that. Is that clear?

KLEINDIENST: Well, Mr. President--

PRESIDENT: Or either he resigns. I'd rather have him out anyway. I don't like the son-of-a-bitch.

KLEINDIENST: The, the question then is--

PRESIDENT: The question is, I know, that the Jurisdiction--I know all the legal things, Dick, you don't have to spell out the legal--

KLEINDIENST: (Unintelligible) the appeal filed.

PRESIDENT: That's right.

KLEINDIENST: That brief has to be filed tomorrow.[27/]

PRESIDENT: That's right. Don't file the brief.

KLEINDIENST: Your order is not to file a brief?

PRESIDENT: Your--my order is to drop the God damn thing. Is that clear?

KLEINDIENST: (Laughs) Yeah, I understand that.

PRESIDENT: Okay.

KLEINDIENST: (Unintelligible)

(President hangs up.)

The Nixon-Kleindienst telephone conversation occurred during a meeting at which the President was talking about antitrust with his Budget Bureau Director George Schultz and domestic advisor John Ehrlichman. Not too surprisingly, Schultz, on leave from the University of Chicago, was reassuring the President that conglomerate mergers posed no competitive problem. The President agreed, expressing the view that antitrust may have been a good thing for the country 50 years, but, as he saw it, "It's not a good thing for the country today." He then walked up to the brink of acknowledging that his concern with the ITT cases reflected the pressure ITT's Chairman Harold Geneen had been bringing on the administration. But then he protests, one suspects too loudly, that Geneen really had not influenced his thinking. The President commented that the Justice Department "had raised holy hell with the people we, uh, uh--well, Geneen, hell, he's no contributor. He's nothing to us. I don't care about him. So you can--I've only met him once, twice--uh, we've, I'm just, uh--I can't understand what the trouble is." Nixon then continues, "It's McLaren, isn't it?" To which Ehrlichman responds, "McLaren has a very strong sense of mission here."

Ehrlichman's defense of McLaren obviously enraged Nixon.

PRESIDENT:	Good--Jesus, he's--get him out. In one hour,
EHRLICHMAN:	He's got a
PRESIDENT:	One hour.
EHRLICHMAN:	very strong--
PRESIDENT:	And he's not going to be a judge either.[28/] He is out of the God damn government. You know, just like that regional office man in, in, in San Francisco. I put an order into Haldeman today that he be fired today.
EHRLICHMAN:	Yeah.

The rest of the story is well known. McLaren was ultimately persuaded to settle the ITT cases, after which he was appointed a Federal Judge.

Over a decade has passed since McLaren failed in his effort to clarify the legal status of conglomerate mergers under existing law. In the meantime, conglomerate merger activity has continued virtually untouched. At this point in time, only the direct legislative approach is adequate to the task. One example of such an approach is the bill co-sponsored by Senators Kennedy and Metzenbaum, s.600. Such legislation would prohibit all very large mergers unless their proponents could prove the mergers were procompetitive or otherwise served the public interest.

Industrial Reorganization of Concentrated Industries

Excessive market concentration pervades much of the American economy. Under existing law the antitrust agencies cannot effectively challenge entrenched monopolists. In 1969, the Justice Department charged IBM as a monopolist in violation of the Sherman Act. After 11 years of bitter legal battles, it appears the government is about to succumb and settle the case without benefit of a court decision. Nor has the Justice Department fared any better in its monopoly case against AT&T. Likewise, the FTC concedes that its 1973 monopoly case against leading petroleum companies "has ground to a halt." And its big "shared-monopoly" case against leading cereal companies is bogged down in legal technicalities. In short, under existing law the antitrust agencies are outgunned and outnumbered in these big cases, each of which becomes a legal Viet Nam. After years of indecisive legal battles, the government settles for far less than total victory. This effectively leaves the chief bastions of power essentially immune from antitrust challenge. If we are serious about increasing competition in problem industries, new approaches are needed.

Remedying this situation requires: (1) a new mandate from the Congress indicating support for efforts to improve competition in the economy and (2) a new statute that provides effective and expeditious mechanisms for accomplishing this goal.

New legislation along the lines of the late Senator Philip Hart's Industrial Reorganization Act is required. The key to this approach is a rebuttable presumption that a corporation is violating the law if certain structural and/or performance criteria are met. This approach has the virtue of shifting much of the burden of proof to the defendant.

Finally, any reform aimed at dismantling monopoly must include initiatives directed at the role played by modern advertising in the achievement and maintenance of market power. Empirical studies have shown that large-scale advertising, especially for products best promoted by television advertising, is the major source of growing market concentration.[29/] While advocates of reform may always expect a hostile reception by special interest groups, nowhere is this more true than in advertising. Current attempts by special interest groups to dismantle the FTC stem largely from its investigation of advertising directed at children.

But this makes it all the more important that academicians participate in efforts to develop new policy initiatives in the area of advertising. I claim no ready-made panacea for dealing with the problem. Any across-the-board approach is likely to be too simple to be effective. But the stakes are high. In 1980, over $50 billion will be spent on advertising and promotional efforts, the main effect of which will be to persuade rather than inform. Some economists rationalize these huge expenditures on grounds that we can afford a good deal of waste in our affluent economy. I suspect this view will be challenged as we become increasingly concerned with private as well as public actions that wastefully consume human and natural resources.

Conclusion

After all is said and done, antitrust policy will not cure all the problems I have mentioned. But this is not sufficient grounds for abandoning this policy. I am receptive to alternative policies. But, after considering the alternatives being offered today, I am still much impressed with the many virtues of a competitive market-oriented economy. While I am sympathetic to much of Professor Galbraith's view of the world, I do not agree with him that antitrust can only be a "charade."[30/] The trouble with Galbraith is that he does not appreciate or understand the many successes of antitrust in maintaining effectively competitive markets. Being a charitable soul, I readily forgive him these errors--although I have brought them to his attention from time to time. But the main point is this: Even if we concede Galbraith's assertion that many markets perform poorly, a powerful case remains for expanding the areas where competition works sufficienty well to make public intervention unnecessary. Reducing the areas requiring direct government intervention is one of the greatest virtues of procompetition policies. While all may not agree that the government that governs least is best, all will agree, I am sure, that no government should govern unnecessarily.

FOOTNOTES

*L.J. Norton Lecture, University of Illinois at Urbana-Champaign, April 17, 1980.

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[1]Harold C. Livesay, American Made, 1979.

[2]H. Sampson, The Sovereign State of ITT, New York: Stein and Day, 1973, p. 125.

[3]J.M. Connor, The U.S. Food and Tobacco Manufacturing Industries, Agricultural Economics Report No. 451, ESCS, USDA, March 1980, p. 10.

[4]Standard Oil Co. of New Jersey v. United States, 221 U.S. 83(1911).

[5]Alan Greenspan, "Antitrust," in Ayn Rand, Capitalism: The Unknown Ideal, 1962, p. 66.

[6]H. Leibenstein, "Allocative Efficiency v. X-Efficiency," American Economic Review, June 1966, p. 37.

[7]Weiss summarizes studies in banking, petroleum distribution in food retailing. See Leonard W. Weiss, "The Structure-Conduct-Performance Paradigm and Antitrust," The Pennsylvania Law Review, Vol. 123, (1972) pp. 1107-15.

Another study on food retailing was recently published by L. Hall, A. Schmitz and J. Cothern, "Beef Marketing Margins and Concentration," Economica, August 1979, pp. 295-300.

[8]R.C. Parker and J.M. Connor, "Estimates of Consumer Loss to Monopoly in The U.S. Food Manufacturing Industries," American Journal of Agricultural Economics, November 1979, p. 631.

[9]F.M. Scherer, "The Posnerian Harvest: Separating the Wheat from Chaff," Yale Law Review, April 1977, pp. 997-98.

[10]F.M. Scherer, Industrial Market Structure and Economic Performance, 1971, pp. 408-09.

[11]For my views on the subject see Mueller, "Industrial Concentration: An Important Inflationary Force," in H.J. Goldschmid, et al., Industrial Concentration: The New Learning, Little Brown: New York, 1974, pp. 280-306.

[12]See especially O. Eckstein and G. Fromm, Steel and the Post-War Inflation, Joint Economic Committee Study Paper No. 2, 86th Congress, 1st Session, November 6, 1959.

[13]C. Jackson Grayson, Jr. with Louis Neeb, Confessions of a Price Controller, 1974.

[14]W.F. Mueller, The Celler-Kefauver Act: The First 25 Years, A study prepared for the use of the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives, 96th Congress, 1st Session, November 7, 1969.

[15]Joan Robinson, The Economics of Imperfect Competition, Second edition, 1969, p. xi.

[16]Dennis C. Mueller, "The Effects of Conglomerate Mergers," Journal of Banking and Finance, (1977).

[17]W.F. Mueller, "Conglomerates: A Non-Industry," Chapter in W. Adams (ed.), The Structure of American Industry, 1977, pp. 441-81.

[18]Fortune, June 1965, p. 194.

[19]Wall Street Journal, March 26, 1969, p. 20.

[20]Jon G. Udell, "Social and Economic Consequences of Merger Movement in Wisconsin," Bureau of Business Research and Services, UW-Madison, May 1969.

[21]"Bigness Becomes the Target of the Trustbusters," Fortune, March 26, 1979, p. 34ff.

[22]Fortune, March 26, 1979, p. 91.

[23]A.C. Hoffman, "Trends in the Food Industries and Their Relationship to Agriculture," Farm Foundation, Chicago, November 11, 1962, p. 2.

[24]W.F. Mueller, "The ITT Settlement: A Deal with Justice?", Industrial Organization Review, Vol. 1, No. 1, 1973, pp. 68-69.

[25]Ibid.

[26]Note by author: Because Attorney General John Mitchell had represented ITT, he was required to disqualify himself in the ITT cases, delegating his responsibilities in these matters to Richard Kleindienst, Deputy Attorney General.

[27]Note by author: This is a reference to the appeal brief to the Supreme Court in the ITT-Grinnell Case.

[28]McLaren was being considered for appointment to the Federal bench. Following the settlement he was appointed a Judge in the Northern District of Illinois.

[29]W.F. Mueller and R.T. Rogers, "The Role of Advertising in Changing Concentration of Manufacturing Industries," Rev of Econ and Stat, February 1980, pp. 89-95.

[30]See testimony of J.K. Galbraith and W.F. Mueller, Hearings on Planning Regulation and Competition, Subcommittees of the Select Committee on Small Business, U.S. Senate, 90th Cong., 1st Sess., June 29, 1967, pp. 1-11, 17-27.