



AgEcon SEARCH
RESEARCH IN AGRICULTURAL & APPLIED ECONOMICS

The World's Largest Open Access Agricultural & Applied Economics Digital Library

This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.

Help ensure our sustainability.

Give to AgEcon Search

AgEcon Search
<http://ageconsearch.umn.edu>
aesearch@umn.edu

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

THE ANTI-ANTITRUST MOVEMENT

by

Willard F. Mueller*

WP-53

June 1981

*The author is William F. Vilas Research Professor of Agricultural Economics, Professor of Economics, and Professor in the Law School, University of Wisconsin-Madison. This paper was the Keynote Address for the Conference on Industrial Organization and Public Policy, Middlebury College, Middlebury, Vermont, April 16, 1981, and will be published in the Conference Proceedings.

THE ANTI-ANTITRUST MOVEMENT

Willard F. Mueller

We are in the midst of a new antitrust movement. But unlike those of earlier times, this one is an "anti" antitrust movement. Tonight I shall place the current attack on antitrust in an historical perspective, examine its origins, and comment on the arguments of the economist who has emerged as the most popular exponent of abolishing the antitrust laws.

The antitrust laws were this nation's response to the laissez-faire capitalism that came into full flower after the Civil War. The new economic order, epitomized in the great trusts, created a feeling of unease among the people. Writing in 1911, Supreme Court Justice John M. Harlan characterized the mood that gave birth to the Sherman Act of 1890. "There was everywhere," said Harlan, "a deep feeling of unrest...the conviction was universal that the country was in real danger [from] the 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..."^{1/}

These feelings and fears gave rise to the Sherman Act of 1890. This act and the Clayton Act of 1914 were rooted primarily in the belief that excess corporate power must be restrained to assure fair competition, prevent exploitation of the consumer, and protect democratic institutions by preventing excessive centralization of economic power.

Until World War I there was continuing agitation for more vigorous enforcement and strengthening of the Sherman Act of 1890. In the 1912 presidential campaign each candidate--Roosevelt, Taft and Wilson--

spelled out an agenda for curbing excessive corporate economic power. The result was the enactment in 1914 of the Clayton Act and Federal Trade Commission Act. World War I changed abruptly the nation's agenda, and following that conflict concern with these matters was set aside as the nation was promised a return to normalcy.

During the 1920s there occurred the first concerted attack on the antitrust laws. Enforcement effort dwindled, many courts were openly hostile, and for a time the Federal Trade Commission came under siege and was charged with harboring persons hostile to American capitalism. To many, a return to "normalcy" meant a return to the laissez-faire capitalism of the 19th century.

The most progressive senators such as LaFollette and Norris continued to support the FTC until the middle 1920s, when in 1925 President Coolidge appointed William E. Humphrey, his former campaign manager and a lobbyist for Western lumber interests, to the chairmanship of the FTC. The new Humphrey majority's anti-antitrust sentiments so alienated the progressives that some proposed abolishing the agency. Under Humphrey's aegis, the FTC was converted from an instrument for "the preservation of fair methods of competition --- into a device for limiting price competition itself."^{2/}

By the late 1920s and early 1930s many special interest groups urged drastic changes, if not outright repeal, of the antitrust laws on grounds that these laws shackled business initiative and that their repeal was essential to economic recovery; many of the arguments were very similar to those used today.^{3/}

The most ambitious proposal for legitimizing a cartelized economy was the Swope Plan of 1931, formulated by General Electric president Gerald Swope. It called for coordinating production and consumption through legalized cooperation among corporations to stabilize "competitive methods and prices."^{4/} In

1932 both political parties were being urged to repeal or drastically weaken the antitrust laws. Leading members of the American Economic Association rallied to the defense of the antitrust laws. In a sharply worded "reaffirmation of the essential principle of fair competition," the economists urged both political parties to reject these attacks.^{5/}

The statement may have had some effect. The 1932 Republican platform was silent on the issue, though the chairman of the resolutions committee favored a plank attacking the Sherman Act. The Democratic party platform included a brief statement embodying the main features of the "Economists Statement".

Any satisfaction over this seeming victory was short-lived, however, since a centerpiece of one of the New Deal's first creations, the National Industrial Recovery Act (NRA), repudiated the antitrust laws, replacing them with the "codes of fair competition" that businessmen had sought and FTC Chairman Humphrey had tried to give. Then, quite unexpectedly, at what seemed antitrust's darkest hour, a new era of antitrust began. In 1935 the NRA, already economically ill, was given a death sentence by the Supreme Court. President Roosevelt, disturbed by the failures of his program to prevent a deepening of the depression in 1937-38, turned his back--at least partially--on centralized NRA-type planning in favor of making competitive capitalism work more effectively. To accomplish this he appointed Thurmond Arnold to head a substantially enlarged Antitrust Division and called for a full-scale investigation into the way twentieth-century capitalism worked and how it could be improved.

During 1937-1942, a period many recall as the golden age of antitrust, Thurmond Arnold pursued an aggressive policy. In a single year he filed more Sherman Act cases than had been brought during the first 20 years

of the Act. Perhaps the main legacy of these years was the demonstration that antitrust still had a meaningful role a half century after the Sherman Act was enacted. Although Arnold's big cases generally were stalled during the war years, the antitrust agencies rebounded strongly at war's end, and the big cases went forward.

While antitrust as a "movement" was dormant in the post-war decades, the enforcement effort did not wither as it had after World War I. The reason for this difference, as historian Richard Hofstadter persuasively argues, was that Arnold's regime had resulted in the institutionalization of the antitrust process: "Despite the collapse of antitrust feeling both in the public at large and among intellectuals, antitrust as legal-administrative enterprise [was] solidly institutionalized."^{6/}

The most important area of activity involved merger enforcement, which was given new life by the Celler-Kefauver Act of 1950. The act amended and greatly strengthened Section 7 of the Clayton Act, which had been rendered totally ineffective by a series of Supreme Court decisions in the 1920s.

Following passage of the 1950 Act, the FTC and the Antitrust Division initiated an aggressive program of enforcement. Although it has been almost totally ineffective in dealing with conglomerate mergers, the Celler-Kefauver Act has been used effectively in challenging horizontal mergers, the type that most directly injure competition. A few statistics illustrate the immensity of the merger enforcement effort. During 1951-1980 the antitrust agencies issued 500 merger complaints challenging 1,477 mergers. Nor was this effort merely a "charade" involving small acquiring companies, as Galbraith has asserted. The bulk of these complaints challenged large acquiring companies: 83 percent of all

acquired assets were by companies with assets exceeding \$1 billion and 95 percent by companies with assets exceeding \$250 million.^{7/}

From my studies, I conclude that many American industries would definitely be much more concentrated were it not for this enforcement effort. Many large corporations seem to have an insatiable appetite for growth by merger, even when it can be accomplished only by conglomerate acquisitions that make little or no economic sense. It takes little knowledge of business behavior to realize that without restraints on horizontal mergers, this merger appetite would be wholly unrestrained, leading to unacceptably high levels of concentration in many industries.

The Celler-Kefauver Act clearly has done very little about conglomerate mergers. But it might have been otherwise had the agencies followed through on the efforts begun in the late 1960s and early 1970s. The Supreme Court, under Chief Justice Earl Warren, had upheld the government in all of the conglomerate merger cases to reach the highest court. The agencies, especially the Antitrust Division under Donald Turner (1966-1968) hesitated in following up on these victories. Then, in 1969, President Nixon appointed Richard W. McLaren to head the Antitrust Division. As a condition of accepting the appointment, McLaren had received Attorney General Mitchell's approval to test whether the Celler-Kefauver Act could be used to challenge successfully large conglomerate mergers, especially those involving acquisitions of dominant firms and those creating the potential for reciprocity. McLaren first laid out his game plan, and then began carrying it out expeditiously.^{8/} Although few observers believed McLaren would actually carry out his plan to challenge conglomerate mergers, during 1969 he brought suit to block three large acquisitions by ITT (Hartford Fire Insurance, Canteen Corporation and

the Grinnell Corporation), and two other large conglomerate mergers. This marked the zenith of the conglomerate merger enforcement effort.

The counterattack came swiftly. While most business leaders merely criticized McLaren, ITT officialdom, spearheaded by Board Chairman Harold Geneen, descended on Washington, perhaps encouraged by ITT's success in helping to topple the Allende government in Chile.^{9/}

I have recounted the ensuing campaign at length elsewhere, though I did so without benefit of the subsequently released White House "Watergate" tapes.^{10/} These tapes demonstrate that Richard McLaren's policy was overruled by the President himself. A key day in these events was April 19, 1971. Several months earlier Richard McLaren had successfully petitioned the Supreme Court for permission to appeal the ITT-Grinnell case, and the Justice Department's appeal brief was ready by March 1971. Under White House pressure, McLaren asked the Court to postpone submission of the brief for one month, to April 20, 1971. On the afternoon of April 19, 1971, the President met with his chief aide, John Ehrlichman, and George Schultz, Director of the Office of Management and Budget. Their conversation was recorded by the President's secretly installed tape recorder.^{11/}

The conversation begins with Ehrlichman telling the President that the ITT-Grinnell appeal was being pursued despite his attempts to give the Justice Department "signals" to the contrary. The President expressed outrage, and decided to call Deputy Attorney General, Richard G. Kleindienst, to give McLaren his marching orders.

President: [picks up the telephone] yeah.

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 [Attorney General 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.

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 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.

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.]

After this conversation the President said to those gathered, "I hope he resigns. He may." Then follows an attempt by George Schultz to assure the President that he was following sound Chicago School economics in permitting conglomerate mergers. It must have comforted Nixon to learn that Schultz had "checked this over with my friend Stigler" who assured Schultz that mergers presented no problem.

But Nixon was too preoccupied with McLaren's independent behavior in the ITT case to sit silently and endure for long Schultz's lecture on "Chicago School" economics.

President:...the problem is McLaren's a nice little fellow who's a good little antitrust lawyer out in Chicago. Now he comes in and all those bright little bastards that worked for the Antitrust Department for years and years and years and who hate business with a passion.. have taken him over ... That was all right fifty years ago. Fifty years ago maybe it was a good thing for this country. It's not a good thing for the country today. That's my views about it, and I am not--we've been through this crap. They've done several of them already about--they raised holy hell with the people that we, uh, un--well Geneen [Chairman of ITT], 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--we've, I'm just uh--I can't understand what the trouble is. 12/

Presidential counsel John Erlichman then made a feeble effort to come to McLaren's defense.

Erlichman: McLaren has a very strong sense of mission here.

President: Good--Jesus, he's--get him out. In one hour.

Erlichman: he's got a

President: One hour.

Erlichman: Very strong--

President: And he's not going to be a judge either. He is out of the God damn government. You know, just like that regional office man in, in San Francisco. I put an order into Haldeman today that he be fired today.

Erlichman: Yeah

Attorney General Mitchell subsequently discussed these matters with the President and advised him that it would be politically unwise to interfere with the ITT appeal. The President agreed to heed Mitchell's advice to permit the appeal to go forward after Mitchell assured him, "we can get rid of the ITT thing, I think".

Get rid of it they did. The Justice Department entered into a sham agreement with ITT settling all three ITT cases before the Supreme Court was given an opportunity to hear the ITT-Grinnell appeal.^{13/} Thus ended the assault on conglomerate mergers. Since 1971 no significant conglomerate mergers have been challenged.

THE NEW ATTACK ON ANTITRUST

It would be a mistake to single out the ITT affair as the origin of the current anti-antitrust movement. It was merely one scene in a hit play, "The Watergate Scandals," that ran well in Washington for two seasons. McLaren's assault on conglomerate mergers floundered, as Henry C. Simons might have said, on the orderly process of democratic corruption.

The new attack on antitrust began well before Watergate. The very success of antitrust and the consumer movement were partly responsible for galvanizing corporate America into action in the 1960s and 1970s.

From World War II until about 1973-1974, the enforcement effort was modestly aggressive, especially in the area of mergers, and the courts became increasingly sympathetic to strict interpretations of these laws. Private antitrust activity reached historic highs in the 1960s and 1970s. As historian Richard Hofstadter put it, whereas "once the United States had an antitrust movement without prosecution; in our time there have been antitrust prosecutions without a movement."^{14/}

The Warren Court played a central role in all this, as perhaps the only Supreme Court since 1890 that felt comfortable with vigorous enforcement of the antitrust laws. But the strong pro-antitrust era of the Warren Court ended in 1973-1974, when in the words of associate Justice White, a "new anti-trust majority" emerged. One legal authority asserts that the Burger Court has a deep-rooted "anti-antitrust" bias.^{15/}

The changed composition of the court reflected a broader conservative movement that had spread across the land, as special interests mobilized to change the antitrust laws as well as other aspects of our economic and political systems. It is a mistake to assume the new attack on antitrust flowered from seeds only recently planted. It germinated two decades ago and has been growing continuously ever since.

The "Chicago School" of economics has long provided the main intellectual resources for attacking the antitrust laws and their enforcement. But the views from Chicago did not have great influence on public policy until they became firmly implanted at a number of other universities, (e.g., UCLA, Virginia, Rochester, and Texas A&M) and when they became generously endowed by industrial interests seeking intellectual legitimization of their objectives.

During the 1960s and 1970s business interests stepped up greatly their support of groups and individuals holding views compatible with those of business. The most obvious manifestations of corporate efforts aimed at shaping views toward modern capitalism are the American Enterprise Institute, the Hoover Institution, the Heritage Foundation, and other centers of conservative economic thought. The National Chamber of Commerce has supported academic researchers critical of the regulatory agencies.^{16/} Corporate philanthropists of the New Right have increasingly contributed generously to "scholars". The John M. Olin (of Olin Corporation) and Sarah Schafie Foundation (large holder of Gulf Oil securities), together reportedly have

given \$7.5 million to academics at places like the University of Chicago, UCLA, and the American Enterprise Institute.^{17/} The Heritage Foundation, launched just seven years ago with a \$250,000 contribution by ultraconservative brewing tycoon Joseph Coors last year had a budget of \$5.3 million.^{18/}

The world's largest corporation, AT&T, has assumed responsibility for publishing the major professional journal in regulatory economics, the Bell Journal.^{19/} If this is a harbinger of how our professional journals will be sponsored in the future, perhaps IBM or Exxon will take over the financially troubled Industrial Organization Review.

The University of Miami's Law and Economics Center provides special two-week, all expense paid, cram courses in laissez-faire economics for the federal judiciary. The Center is financed almost exclusively by large corporations, in some cases, corporations (ITT and IBM) that have cases before the very judges attending the Center.^{20/} To date nearly one-fifth of the Federal judiciary has attended at least one of the Center's institutes. Upon returning home to their chambers, the judges receive monthly mailings from the Center on crucial economic issues like advertising. The anti-anti-trust bias of the Center's faculty was probably pretty well summed up by Chicago School economist, Harold Demsetz, when he told the assembled judges, "My own personal view is that the place of the antitrust laws comes with explicit price collusion--and probably nowhere else."^{21/}

These various forces are subtly, and often not so subtly, influencing many persons' views toward the antitrust laws. For example, OMB Director David Stockman, an historian by training, reportedly gained most of his knowledge of regulatory economics by reading publications of the American Enterprise Institute. (Not too surprisingly, Stockman named Institute scholar, James Miller, to head regulatory matters within OMB.) This also likely

explains Stockman's views on antitrust, which he put succinctly: "I disagree with the whole antitrust tradition."^{22/} It is hardly surprising, therefore, that, "the decision to push for an end to funding the Federal Trade Commission's competition bureau was made on the basis of a two page memorandum after less than a minute's deliberation by OMB Director Stockman."^{23/}

Ironically, the current critics of antitrust rely on the ideology of free markets. They object not to competition, they assert, but rather to the allegedly anticompetitive effect of the antitrust laws. Competition in their view, already is very intense and would continue to be so in the absence of antitrust; and where competition is not working effectively, the problem more likely than not is to be found in some anticompetitive government-imposed policy. There is also much loose talk about the need for larger American corporations so that they can compete more effectively in foreign markets.

Rather than attempt to review all the critics, I shall this evening examine in some detail the criticisms raised by Lester C. Thurow, Professor of Economics and Management at the Massachusetts Institute of Technology. I do so not out of personal malice. Professor Thurow has excellent academic credentials in his field of specialization, and I understand he is a pleasant and engaging young man.

I have chosen to discuss Thurow's views solely because nearly every recent criticism of antitrust appearing in the popular press and business magazines give prominent play to his ideas.^{24/} Thurow has never been one to limit his views to the classroom or to the professional literature. Although he has been commenting on antitrust policy for some time, he first moved to center stage by writing a piece for The New York Times, entitled, "Let's Abolish the Anti-trust Laws."^{25/} Since then his voice or written words are everywhere. This past February he was interviewed at

length by the Executive Editor of Dun's Review. Dun's titled the interview: "Abolish the Antitrust Laws", with the long subtitle, "That's the View of Top Economist Lester Thurow, A Liberal Democrat, Who was an Economic Advisor to George McGovern and Jimmy Carter."^{26/}

Methinks that much of Thurow's popularity with the business press is explained by the contents of the subtitle. Nothing so warms the heart of the conservative as criticisms of antitrust by "liberal democrats" that were former advisors to presidents or contenders for high office.

To avoid mistaken criticism, I shall comment only on statements made directly by Thurow, thus avoiding error that comes from misquotations or misinterpretations by the occasional unsophisticated or careless journalist.

I begin by examining his views as revealed in his latest book, The Zero-Sum Society.^{27/} In his review of Zero-Sum, my colleague, Professor Robert J. Lampman, predicts that the book "will interest undergraduate students in economics as well as the general reader."^{28/} Were it restricted to the narrower audience of professional economists, Thurow's errors would cause less mischief.

As with other matters, Thurow's views on antitrust are unequivocal: "The antitrust approach has been a failure", says Thurow, "The costs it imposes far exceeds any benefits it brings."^{29/} He gives five reasons for these conclusions.

FREE TRADE MAKES ANTITRUST UNNECESSARY

In markets where international trade exists or could exist, "If they [the antitrust laws] do anything, they only serve to hinder U.S. competitors who must live by a code that their foreign competitors can ignore."^{30/} The assertion that U.S. antitrust laws disadvantage American corporations in international competition is an old chestnut used to discredit the laws for decades. Yet there is no persuasive empirical evidence, nor does Thurow cite

any, to support the claim. First, U.S. corporations generally are considerably bigger than their foreign competitors. Second, the main restraints on U.S. behavior in foreign markets are those forbidding participation in cartels. There are few, if any, respectable economic arguments that show how the inability to participate in a cartel reduces a company's ability to compete. On the contrary, the accepted economic wisdom, supported by considerable historical experience, is that firms outside a cartel have greater sales and profits than the cartel.

Thurow's other argument regarding international trade is that, "If competitive markets are desired, the appropriate policy should be to reduce barriers to free trade." ^{31/} He cites as examples the actual trade barriers in steel and the proposed barriers in automobiles. Thurow's problem here is that he lacks historical perspective. We did have free trade in steel until the late 1960s. But, because competition was ineffective among domestic steel companies, they responded to imports by yielding market share rather than by cutting price. As a result, by the late 1960s they had surrendered such a large part of the market to foreign competitors that they placed in jeopardy the jobs of hundreds of thousands of workers and the capital of numerous investors. At this point the Johnson administration was persuaded to negotiate the first of a series of restraints on steel imports. The point here is that ineffective competition was the underlying reason for abandoning free trade in the first place.

I readily acknowledge that the antitrust laws have failed to keep the steel industry competitive enough, though they have accomplished much even here. But this is clear. The problem with the steel industry would not be improved by repealing the antitrust laws and permitting greater concentration, and certainly not by permitting complete cartelization

as Thurow would permit in industries involved in international trade. The available evidence indicates that the largest steel companies have not been the most innovative and that greater size is not needed to make the leaders more efficient. Moreover, with or without free trade, buyers in Mid-America are totally dependent on domestic steel companies when buying many products and are protected only by competition among domestic sellers. Thus, free trade often promises much more than it delivers, and clearly merely being in favor of it in principle is not reason enough to warrant abandoning concern with competition among domestic competitors. As Frank Knight said many years ago, the free traders win the debates but the protectionists win the elections.

MONOPOLY FOR BREAKFAST?

Thurow next comes to the defense of monopoly by arguing that the general rise in income tends to greatly increase the relevant market in which firms compete. Most goods people buy today are not "physiological necessities but luxuries that could be substituted by other goods..."^{32/} The person considering the purchase of a Rolls Royce may substitute for it "a swimming pool, a summer home, or a wide variety of products." In Thurow's economic world all of these products are in the same market, so even if Rolls Royce has a monopoly it is not in a position to exploit it. Thurow then proceeds to use this economic argument to attack one of his favorite targets for ridicule, the FTC's case challenging the monopoly power of the leading makers of dry breakfast cereals. Thurow's defense of the industry exceeds in zeal--if not in economic rigor--that of the economists employed to defend the industry in court, e.g. J. Fred Weston, Harold Demsetz, Lester Telser, Jesse Markham and a gaggle of others.

Thurrow concedes that a few sellers have power over the price of branded cereals. But this poses no problem in his view, "Since any individual consumer can, if he chooses, buy no-name brand corn flakes at a much lower price, the brand names must be yielding some psychic utility or brand-name corn flakes would not be sold." ^{33/} Acknowledging that this "psychic utility" likely was created by advertising, Thurrow asks, "so what?" After all, "most wants have been determined by some...form of advertising." And while this may lead some consumers to make "silly decisions," the government has no business stopping "people from making silly decisions that do not affect anyone but themselves." If one were to pursue similar logic on the subject of income distribution, an area in which Thurrow professes expertise, one might reason that market failures that distorted income distribution were not the public's business so long as the resulting distortion created by say, advertising, affected only the individuals misled by it. It is generally acknowledged that the food purchase decisions of the poor are more often distorted by advertising than are the decisions of the economically more fortunate. But Thurrow's compassion for the poor evidently does not extend to situations where advertising misleads them into paying enormous monopoly overcharges; they are being justly punished for making "silly" purchase decisions.

This naive defense of advertising-created monopoly power is almost enough to make a "Chicago School" economist blush. Indeed, Thurrow himself evidently is not entirely satisfied, for he proceeds to build other defenses for the industry. But instead of setting things aright, he merely falls into new errors.

He considers the case where consumers do not have a lower price alternative to a powerful brand of corn flakes. Not to worry here either

says Thurow: "if the brand premium gets too large, others can easily enter the no-name brand corn flakes market." After all, he sees no patent or other significant entry barriers. (He conveniently ignores the relevant entry barriers: trademarks of established brands, the huge promotion and advertising costs of launching new brands, and the difficulty of getting shelf space because of brand proliferation). Of course, the very fact that branded corn flakes typically command a 20 percent premium over no-name brands is compelling evidence to most industrial organization economists that there exists enormous barriers protecting the established brands. Thurow also is less than fair with his readers in selecting corn flakes as his example, since they, puffed wheat and puffed rice are about the only cereal brands available under private label. Indeed all private label brands of cereal make up less than 4 percent of total dry breakfast cereals. Markups on other dry cereals are considerably greater than on corn flakes. For example, Kellogg's Sugar Frosted Flakes are essentially corn flakes with sugar added. Scherer^{34/} reports that after adjusting for the added sugar costs, Sugar Frosted Flakes prices are 16 percent more than Kellogg's Corn Flakes, which in turn sell for 20 percent more than private label corn flakes.

Thurow defends these high premiums on the grounds that consumers are better off because their psychic utility has been enhanced by the amount of the premium. This is the kind of silly reasoning that gives economists a bad name among people of common sense. The prices consumers pay in these circumstances are determined by the market power of sellers rooted in oligopoly and product differentiation created largely by advertising. Merely because some consumers are willing to pay the price asked does not automatically justify that price. Many consumers prefer

"2%" or "skim" milk to ordinary milk. And doubtless many would be willing to pay a premium for it although its costs are less than for milk with higher butter-fat content. The reason they pay less is that competition forces prices to reflect cost differences. This is the way prices behave in a market where competition is working. All this Thurow ignores.

Thurow closes his defense of breakfast cereal pricing by beseeching his readers to not fear even if cereal companies monopolize cereal sales. Even in this worst possible case the consumer is protected because "there are still a great deal of other breakfast alternatives (bacon and eggs, no breakfast). These other products make the market a competitive market even if there is no competition within the dry cereals business."^{35/}

Now, this is really too much. True, often substitute products place limits on the holders of market power. And one must be tolerant of laymen who conjure up all sorts of silly examples of substitutes that protect consumers against monopoly prices. But surely the American Economic Association should expect better of its members. The computed cross elasticity of demand between breakfast cereals and eggs is .01.^{36/}

As all of you bright undergraduates know, this means that a 100 percent increase in the price of breakfast cereals will result in a 1 percent increase in the consumption of eggs. I doubt if the cross elasticity of demand between cereals and bacon is any higher. Thurow's other alternative for curbing the power of a cereal monopolist, namely to not eat breakfast, sounds like Marie Antoinette's advice to the poor of France, "let them eat cake." Many Americans may go without breakfast, but their doing so has not curbed the power of the cereal companies. The simple fact is that 40 percent of consumers spend over 25 percent of their income on food and 20 percent of consumers spend over 33 percent. Despite the affluence Professor Thurow sees all about him, most

Americans are not indifferent to the billions of dollars in monopoly overcharges incorporated in their food bills.^{37/}

CONGLOMERATES MAKE
ANTITRUST LAWS UNNECESSARY

Another phenomenon of modern capitalism dear to Thurow's heart is the huge conglomerate enterprise. It is not to be condemned but embraced because it so enhances competition as to make the antitrust laws unnecessary because "monopoly rents are inherently limited in an economy full of large conglomerate firms."^{38/}

This is so, says Thurow, because conglomerates are ever ready to enter oligopolistic industries where firms earn high profits: "Excessive rates of return attract competitors, and potential competitors have the ability to enter all those markets that are not natural monopolies."^{39/} Surely no serious student of industrial structure, much less the man of industry, can take this assertion seriously. And Thurow offers not one shred of evidence to support his assertion. In fact, he contradicts the views he expressed in an earlier work, Generating Inequality (1975). In explaining why firms in low-profit industries do not invest in high-profit industries, Thurow said in 1975, "Barriers to entry are often high, and managers often do not have the specialized knowledge necessary to make profits in another industry. The existence of high profits in the cosmetics industry, for example, does not mean that iron and steel executives could earn profits there."^{40/}

Economists still differ over the competitive significance of growing industrial conglomeration. But none can ignore the growing evidence that continuing mergers among large firms are eliminating more and more

potential competitors. Nor do conglomerates have a good track record of significant de novo entry in highly concentrated industries, e.g., cereals, soft drinks, etc.

Finally, growing industrial conglomeration tends to dull the incentive for large conglomerates to enter one another's domains, recognizing that to do so is to invite hostile retaliation elsewhere.^{41/} I realize mine is still a minority view on this aspect of conglomerates. Many economists are blind to the problem because they ignore the available evidence and do not seek out evidence of their own. For believers and unbelievers alike, I suggest reading the intriguing story of how AT&T and IBM have avoided direct competition for years because each believed it had more to gain from avoiding competition with the other than engaging in it.^{42/}

ANTITRUST COSTS EXCEED THEIR BENEFITS

Thurow next argues that "it is not obvious that anything of economic value is accomplished even if an antitrust case is won by the government."^{43/} As usual he chooses his own ground, in this instance, his argument rests almost exclusively on the IBM case--as he interprets it.

Thurow first supposes that if the government were to win the case, IBM might be broken into three or four firms. So what, he exclaims! "By now we should have enough experience to know that a three or four firm oligopoly does not act noticeably different from a one-firm monopoly faced with potential competition (the Japanese)..."

Not so. Most industrial organization economists, even those of a Chicago view, believe there is a significant difference. Also, Thurow's arithmetic is faulty. If IBM were broken up, the total number of U.S. mainframe computer manufacturers would be ten or more. And equally important, were IBM to lose its dominant position, entry would be easier and existing firms could compete more effectively, especially since appropriate relief would also call for restraint on predatory conduct.

The truth, of course, is that neither Thurow, I, nor anyone else knows what relief will occur if the government wins. My candid opinion is that at best the new Assistant Attorney General for Antitrust, William Baxter, will end the case with an innocuous consent agreement, or worse still abandon the case. But should this come to pass, it will not demonstrate any inherent defect in antitrust but a manifestation of the anti-antitrust movement's success in placing in high office persons who do not believe in much current antitrust doctrine.

Thurow also glibly asserts that any tampering with IBM's dominant position will undermine its efficiency, thereby giving aid and comfort only to our enemies, the foreign computer makers. This is another unsupported assertion for which there is much contrary evidence. ^{44/}

Although Thurow concedes IBM's "dominant position" permits it to earn handsome profits, not to worry, because "this is not to say that it has been able to extract crippling monopoly rents from computer customers." This comment sheds much light on Thurow's value judgments concerning what constitute excessive profits. He apparently would tolerate all but those that are so excessive as to "cripple" consumers. This is like telling the thief he may commit grand larceny so long as he does not maim his victim.

After his tour de force demonstrating that antitrust provides no benefits, Thurow condemns the laws because enforcement "diverts scarce resources from the real problem, which is productivity." ^{45/}

Thurow again turns to the IBM case as a "perfect" example of this waste of scarce resources. Economists in the IBM case, as Thurow understands it, wasted numerous resources debating over what constituted the relevant market in which to measure IBM's market power. He says that "if the market is large

mainframe computers, then IBM's got 98% of it... On the other hand, if IBM is in the office equipment market, then the company has a small share of that market. So all of the testimony revolves around such issues as whether a typewriter is the same thing as a computer. Well, that's just a silly issue..."^{46/}

Silly indeed! So silly that I wonder where in the world Thurow got his unworldly impressions as to what the case is all about. True, relevant market is one important issue. But never did the government assert, nor did any economist testify, that IBM had 98 percent of any market. And even though some IBM economists engaged in flights of fancy in defining the breadth of the relevant market, none ever went so far as to include typewriters.

Thurow's unfamiliarity with actual cases has never prevented him from drawing important conclusions about antitrust matters. In response to the question of whether he could think of a single antitrust case that had been good for the economy he first replied, "I can't think of any off hand." But on reflection he cited the "Brown Shoe machinery case." He said the company involved "eventually fell on hard times and was merged out of existence. In a sense the government destroyed the company. But I don't think that's the purpose of the antitrust laws."^{47/}

Students of antitrust doubtless will be puzzled by this example, since there never was such a case. Apparently Thurow got the famous Brown Shoe case, involving Section 7 of the Clayton Act, confused with the famous United Shoe Machinery case, involving the Sherman Act. Both are precedent setting cases. But there is no basis for Thurow's statement that the government's action caused the demise of either Brown Shoe or United Shoe Machinery. Both were ordered to divest certain properties,

But the divested properties are still alive and well. Admit it, Lester, you never seriously studied carefully a single antitrust case.

NONPRICE COMPETITION TO THE RESCUE

Thurrow's final objection to the antitrust laws is their preoccupation with price competition. Reminiscent of the "new Competition" literature of the 1950s, Thurrow argues that "price is clearly only one of the many competitive weapons (advertising, product quality, and so forth) and in many areas not the most useful or used weapon." ^{48/} True enough. But Thurrow ignores two key points. First, if a firm is shielded from price competition, often the same shields protect it from other forms of competition. Second, some other forms of competitive rivalry, especially advertising, may be destructive of competition because they erect entry barriers and inflate costs. But Thurrow dismisses this possibility by appeal to the standard laissez-faire rationalization that however a corporation chooses to compete must be in the public interest because private decision-makers can be trusted to choose that which is best. As he sees it, "When industries do not engage in price competition they do so for the perfectly good reason [that] it simply isn't the most efficient way to compete." ^{49/}

Now you have heard it all: Thurrow's five reasons why we should abolish the antitrust laws. He asks his readers to accept his teaching on faith; he cites no authority for any of his assertions.

THE THUROW ANTITRUST ACT OF 1980

Do not misunderstand me. Antitrust does have a place in his Zero-Sum Society. His antitrust act would consist of two basic propositions:

The first would be a ban on predatory pricing...The second would be a ban on explicit or implicit cartels that share either markets or profits. Firms can grow by driving competitors out of business or by absorbing them, but they cannot agree not to compete with each other. ^{50/}

There it is, "The Thurow Antitrust Act of 1980," clear, concise, and inconsistent. It would prohibit price fixing among all the firms in an industry, yet it would permit all firms in an industry to merge and form a monopoly. Apparently recognizing belatedly this inconsistency, Thurow is now willing to drop his rule against price fixing. When Dun's Review asked his views on price fixing, Thurow replied, "I don't think there's really very much of it going on."^{51/} When he then was asked whether he would "scrub the laws against price fixing too," he replied,

That's right. But Congress would be standing by ready to write a new statute if a rash of price fixing took place. But my hunch is that it probably wouldn't be necessary.^{52/}

Evidently Thurow is unfamiliar with the literally hundreds of U.S. corporations that have been indicted for price fixing in recent years, or the rich historical literature documenting the propensity of businesses to engage in elaborate and pervasive price fixing schemes in nations without laws prohibiting such behavior. He even seems to have forgotten the words of his intellectual mentor, Adam Smith, who warned over 200 years ago that "people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public in some contrivance to raise prices."

In sum, Thurow's case for repealing the antitrust laws rests on no more than his hunches, guesses, speculations, and erroneous interpretations of these laws.

After examining carefully Thurow's views, I think every fair minded person will agree that there really is much less to Thurow's ideas than first meets the eye. His are not the statements of a scholar or even a well informed layman. Most professors expect better of their students in Economics 101.

THUROW'S EMPTY BOX

How to explain, then, the uncritical attention given Thurow's views? The answer is to be found in the anti-antitrust movement that is everywhere about us. All movements seek "respectable" spokesmen. When the movement has a conservative base, none is in greater demand than the liberal intellectual who embraces, in part at least, the conservative's creed. In this setting a man willing to lend his intellectual prestige to a movement and be embraced by it in return, need not necessarily know whereof he speaks. And he may gain the limelight and popular applause for a time by wrapping his ideas in an attractive package. All this it seems Lester Thurow has done. But, alas, after we remove the wrappings on Thurow's package, nothing remains but an empty box.

Thus ends my epistle on Lester C. Thurow. Some of you may legitimately ask, but is there anything in the antitrust box? If your patience permitted, I would gladly stay to answer at length, even at this late hour. I would begin with the confession that I have not been an uncritical champion of these laws or of the adequacy of their enforcement. These laws are imperfect instruments of social control. We must therefore continually appraise with open minds alternative means of ensuring that the enormous powers of the large modern corporation are used to serve the public good. But it is inconceivable to me that America would abandon the antitrust laws without putting in their place something far more substantial than the empty promise that their repeal will result in the rebirth of the world of Adam Smith.

These laws contain our only legal rules for bridling the modern corporation's enormous economic power in the marketplace. These laws' main purpose has always been to maintain, so far as possible, a decentralized economic system and to place some restraint on the use of economic power. Justice William O. Douglas put it well:

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. ^{53/}

Nor have the people given those in the vanguard of the anti-antitrust movement a mandate to return to a system of 19th century laissez-faire capitalism. Nor will the people tolerate such action, once the motives of the anti-antitrusters are more widely understood. There is today, much as in 1890, a feeling of unease and impotence in dealing with powerful corporations that, in the words of former ITT Chairman Harold Geneen, "have become the primary custodians of making our entire system work." This quite naturally raises questions about the legitimacy of their custodianship. A recent Fortune article reported that many Americans are questioning the legitimacy of the large corporation. Fortune found that 51 percent of Americans with incomes of \$25,000 or more believed that "big business is becoming a threat to the American way of life."^{54/} The fact that a majority of the most fortunate beneficiaries of American capitalism hold this view should give pause to those who believe there exists no real concern among the people on these matters. Many businessmen, too, fear that unrestrained capitalism may destroy itself. 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 many predicted."^{55/}

I have expressed these concerns this evening not to attack our system but to urge repudiation of false prophets who would destroy it in the name of saving it. My mentor, the late George W. Stocking, urged in a presidential address that "capitalism must be saved from its friends."^{56/} Never has that advice been more sound than today.

NOTES

- 1/ Standard Oil Company of New Jersey v. United States, 221 U.S. 1, 83 (1911).
- 2/ M. Fainsod and L. Gordon, Government and the American Economy, New York, W. W. Norton & Co., Inc., 1941, p. 520.
- 3/ The president of the American Bankers Association said, "the way to progressive success in all commercial and industrial efforts is through constant introduction of new economies, but against the institution of these economies there is often the menace of the Sherman Law interpretations...Do not changing times call for a careful revision?" The New York Times, Section XX, October 12, 1930, p. 2.
 In 1931, the National Chamber of Commerce included among its four recommendations for recovery, "Modification of the antitrust laws to make clear agreements intended to relate production to consumption." The New York Times, December 18, 1931, p. 15.
- 4/ Fainsod and Gordon, op. cit., p. 569,
- 5/ "The Economists Committee on Antitrust Policy," American Economic Review September 1932, p. 464.
- 6/ R. Hofstadter, "What Happened to the Antitrust Movement?" in E. F. Cheit (ed.), The Business Establishment, New York, John Wiley & Sons, 1966, p. 116.
- 7/ W. F. Mueller, The Celler-Kefauver Act: The First 27 Years, a Study prepared for the use of the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary. House of Representatives, Ninety-fifth Congress, Second Session, Government Printing Office, December 1978.
- 8/ W. F. Mueller, "The ITT Settlement, a Deal with Justice?" Industrial Organization Review, Vol. 1, No. 1, 1973, pp. 67-86.
- 9/ The International Telephone and Telegraph Company and Chile, Report to the Committee on Foreign Relations, U.S. Senate, by the Subcommittee on Multinational Corporations, June 21, 1973.
- 10/ Mueller, "The ITT Settlement," op. cit.
- 11/ The following quotations are from the transcript prepared by the Impeachment Inquiry Staff of the House Judiciary Committee from conversations recorded by President Richard Nixon, commencing 3:30 P.M. April 19, 1971.

- 12/ February 29, 1972, columnist Jack Anderson broke the famous Dita D. Beard (a former ITT employee) story that alleged the ITT settlement was tied to a \$400,000 political contribution by ITT to the Republican party.
- 13/ Mueller, "The ITT Settlement," op. cit.
- 14/ Hofstadter, op. cit., p. 116.
- 15/ H. R. Lurie, "Mergers Under the Burger Court: An Anti-antitrust Bias and Its Implications," Villanova Law Rev., January, 1978.
- 16/ For example, The National Chamber financed a study of conglomerate mergers by Jesse M. Markham that was published as J. W. Markham, Conglomerate Enterprise and Public Policy, Boston, Harvard University, 1973.

A fascinating confidential memorandum was written for the Chamber by Supreme Court Justice Lewis F. Powell, Jr., "Attack on American Free Enterprise," August 23, 1971, shortly before his appointment to the Supreme Court. The memorandum was addressed to Eugene B. Syndor, Jr., Chairman, Education Committee, U. S. Chamber of Commerce. The memorandum is a blueprint for attacking, and perhaps silencing, those critical of any aspect of capitalism. It goes so far as to recommend that the Chamber establish a body of scholars who would review all textbooks in economics, sociology and political science so as to encourage authors, publishers, and users to "return to a more rational balance." He likewise perceived as the most "fundamental problem" the ideological imbalance of many faculties. "Correcting this is indeed a long-range and difficult project...This is a long road and not one for the faint hearted." Ibid, pp. 16, 17 and 19.

- 17/ G. C. Staple, "Free Market Cram Course for Judges," The Nation, January 26, 1980, p. 79.
- 18/ "Reagan's Think Tank" Dun's Review, April 1981, pp. 110-114.
- 19/ This is not to imply that scholars publishing in the Bell Journal have compromised their intellectual principles by doing so. To me this is not a question of whether or not the Journal is tendentious. As a basic principle, scientific journals should not be sponsored by the very interests that are the subject of inquiry. To me this seems self-evident, although many economists evidently feel otherwise. And not too surprisingly, a previous editor of the Journal has, publicly, taken exception to my views.
- 20/ Staple, op. cit., p. 78. See also "Big Corporations Bankroll Seminars for U.S. Judges," Washington Post, January 20, 1980, p. A 1.
- 21/ Staple, op. cit., p. 20.

- 22/ Interview in The Village Voice, quoted by Federal Trade Commissioner Patricia P. Baily in a speech "17th Annual Symposium on Trade, Association Law and Practice, February 25, 1981. Republican Commissioner Baily reportedly had the inside track to become Acting Chairman of the FTC until she gave this speech.
- 23/ Ibid.
- 24/ See for example, "New Thunder from Economists on the Left," Business Week, December 3, 1979, pp. 131, 133; and "Antitrust Grows Unpopular," Business Week, January 12, 1981, pp. 90, 92, 93.
- 25/ L. C. Thurow, "Let's Abolish the Antitrust Laws," The New York Times, October 19, 1980. In 1979 he had written a piece attacking Senator Kennedy's Conglomerate Merger bill. "Bigness and Badness," The New Republic, April 28, 1979, pp. 10-12.
- 26/ "Abolish the Antitrust Laws," Dun's Review, February 1981, pp. 72-74.
- 27/ L. C. Thurow, The Zero-Sum Society, Basic Books, New York, 1980.
- 28/ R. L. Lampman, "Review of The Zero-Sum Society," Journal of Economic Literature, Volume XIX, No. 1, 1981, pp. 91-92.
- 29/ Thurow, The Zero-Sum Society, op. cit., p. 146.
- 30/ Ibid. p. 146.
- 31/ Ibid.
- 32/ Ibid. p. 147
- 33/ Ibid.
- 34/ F. M. Scherer, "The Welfare Economics of Product Variety: An Application to the Ready-to-Eat Cereals Industry," Journal of Industrial Economics, Dec. 1979, p. 127.
- 35/ Thurow, op.cit., p. 147
- 36/ P. S. George and G. A. King, Consumer Demand for Food Commodities in the United States with Projections for 1980, Giannini Foundation Monograph No. 26, March 1971, California Experiment Station, University of California-Berkeley, March 1971, p. 51.
- 37/ R. Parker and J. Connor, "Estimates of Consumer Loss due to Monopoly in the U.S. Food-Manufacturing Industries," American Journal of Agric. Econ., November 1979, pp 626-639.
- 38/ Thurow, The Zero Sum Society, op. cit. pp. 147

- 39/ Ibid., p. 148 (emphasis added).
- 40/ L. C. Thurow, Generating Inequality, New York, Basic Books, 1975, p. 147.
- 41/ W. F. Mueller, "Conglomerates, A Nonindustry," in W. A. Adams (ed.), The Structure of American Industry, New York, Macmillan, 1977, pp. 461-467.
- 42/ See for example, Merrill Brown, "Backstage with Big Business," The Washington Post, February 1, 1981, pp. F1 and F4, and "Litton Evidence Alleging AT&T Coerced IBM will be Permitted at Antitrust Trial," Wall Street Journal, Feb. 9, 1981, p. 5.
- 43/ Thurow, The Zero Sum Society, op. cit., p. 148.
- 44/ See for example, G. W. Brock, The U.S. Computer Industry, Cambridge, Mass.: Ballinger, 1975.
- 45/ Thurow, "Abolish the Antitrust Laws," Dun's Review, February 1981, p. 72.
- 46/ Ibid., p. 73.
- 47/ Ibid.
- 48/ Thurow, The Zero Sum Society, op. cit., p. 149.
- 49/ Ibid., p. 150
- 50/ Ibid.
- 51/ Dun's Review, op. cit., p. 72.
- 52/ Ibid.
- 53/ U. S. v. Columbia Steel Co., 344 U.S. 495 (1948).
- 54/ Fortune, March 26, 1979, p. 91
- 55/ A. C. Hoffman, "Trends in the Food Industries and their Relationship to Agriculture," Farm Foundation, Chicago, November 11, 1962, p. 2.
- 56/ G. W. Stocking, "Saving Free Enterprise from Its Friends," Southern Economic Review, April 1953, pp. 431-44.